1 2 3 4 5 6 7 8 9 10	TEAGUE P. PATERSON, SBN 226659 VISHTASP M. SOROUSHIAN, SBN 278895 BEESON, TAYER & BODINE, APC 483 Ninth Street, 2nd Floor Oakland, CA 94607 Telephone: (510) 625-9700 Facsimile: (510) 625-8275 Email: tpaterson@beesontayer.com vsoroushian@beesontayer.com Attorneys for Plaintiff AFSCME LOCAL 101 SUPERIOR COURT OF THE IN AND FOR THE COU AT SA		
12	SAN JOSE POLICE OFFICERS'	Consolidated Case No.	1-12-CV-225926
13	ASSOCIATION,		re Nos. 1-12-CV-225928,
14	Plaintiff,	1-12-CV-226570, 1-12- 1-12-CV-227864, and 1	CV-226574,
15	v.	Assigned For All Pui	<u>-</u>
16	CITY OF SAN JOSÉ, BOARD OF ADMINISTRATION FOR POLICE AND FIRE	JUDGE PATRICIA LUCAS DEPARTMENT 2	
17 18	DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE, and DOES 1-10,	PLAINTIFF AFSCM	
18	inclusive,		SITION TO MOTION
20	Defendants.	FOR SUMMARY AD	JUDICATION
21		Hearing Date:	June 7, 2013
22		Hearing Time: Courtroom:	9:00 a.m.
23		Judge: Complaint Filed:	Hon. Patricia Lucas July 5, 2012
24	AND DELATED ODOGO COLONA ANTONIO	Trial Date:	June 17, 2013
25	AND RELATED CROSS-COMPLAINT AND CONSOLIDATED ACTIONS		
26			
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Plaintiff AFSCME Local 101 hereby requests the Court to take judicial notice pursuant to California Evidence Code Sections 450 et seq., and in accordance with California Rules of Court 3.1113, subdivision (l) and 3.1306, subdivision (c), of the following material, a true and correct copy of which is attached hereto:

Exhibit A:	AFSCME's original Complaint in this case
Exhibit B:	AFSCME's First Amended Complaint in this case
Exhibit C:	Black's Law Dictionary, 6th Ed. definition of "vested"
Exhibit D:	Merriam-Webster Dictionary (online) definition of "grant" (http://www.merriam-webster.com/dictionary/grant)
Exhibit E:	Merriam-Webster Dictionary (online) definition of "amend" (http://www.merriam-webster.com/dictionary/amend)
Exhibit F:	City ordinance 28752, in relevant part, adding Municipal Code section 3.28.755
Exhibit G:	City ordinance 28914, in relevant part, adding Municipal Code section

Exhibit H: San José Municipal Code, Chapter 3.24, "Retirement System Subsequent to July 1, 1951," Sections 3.24.010 to 3.24.2320 [Current to June 30, 2012].

Exhibits A and B are properly subject to judicial notice pursuant to California Evidence Code sections 453 and 452(d) ("Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States"). For this reason, Plaintiff respectfully requests that the Court take judicial notice of the above-listed document.

Exhibits C-E are properly subject to judicial notice pursuant to California Evidence Code section 451(e) ("The true signification of English words and phrases and of all legal expressions.") Courts often take judicial notice of the dictionary definitions of words, including those found in online dictionaries. (See, e.g., Price v. Starbucks Corp. (2004) 192 Cal.App.4th 1136, 1144 fn.9; Balzaga v. Fox News Network, LLC (2009) 173 Cal.App.4th 1325, 1333.)

Exhibits F-H are properly subject to judicial notice pursuant to California Evidence Code section 453 and 452(b) ("Regulations and legislative enactments issued by or under the authority of

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1	the United States or any public entity in the United States."). See also Trinity Park, L.P. v. City of		
2	Sunnyvale (2011) 193 Cal.App.4th 1014, 1027 ("The Evidence Code also expressly provides for		
3	judicial notice of a public entity's legislative enactments and official acts. Thus, we may take judicial		
4	notice of local ordinances and the o	fficial resolutions, reports, and other official acts of a city.").	
5	B		
6	Dated: April 30, 2013	BEESON, TAYER & BODINE, APC	
7		With And	
8		By: WISHTASP M. SOROUSHIAN	
9		Attorneys for AFSCME LOCAL 101	
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EXHIBIT A

ENDORSED 1 TEAGUE P. PATERSON, SBN 226659 VISHTASP M. SOROUSHIAN, SBN 278895 2 BEESON, TAYER & BODINE, APC 2012 JUL -5 ⊃ 3:21 483 Ninth Street, 2nd Floor 3 Oakland, CA 94607-4051 (510) 625-9700 Telephone: Facsimile: (510) 625-8275 5 Email: TPaterson@beesontayer.com VSoroushian@beesontayer.com 6 Attorneys for Plaintiff and Petitioner, 7 AFSCME LOCAL 101 8 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 IN AND FOR THE COUNTY OF SANTA CLARA 11 Case No. 112U V 227864 12 AMERICAN FEDERATION OF STATE. COUNTY, AND MUNICIPAL EMPLOYEES. 13 LOCAL 101, on behalf of its members. COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION 14 Plaintiff and Petitioner, FOR WRIT OF MANDAMUS 15 v. 1. Unconstitutional Impairment of Contract 16 (Cal. Const. Art. I § 9 & Civ. Code § 52,1) CITY OF SAN JOSÉ and DEBRA FIGONE in 2. Unconstitutional Bill of Attainder 17 her official capacity as City Manager, (Cal. Const. Art. I § 9 & Civ. Code § 52.1) 3. Unconstitutional Taking of Private Property 18 Defendants and Respondents, (Cal. Const. Art. I § 19 & Civ. Code § 52.1) 4. Unconstitutional Taking of Private Property 19 THE BOARD OF ADMINISTRATION FOR Without Due Process 20 THE FEDERATED CITY EMPLOYEES (Cal. Const. art. I § 7 & Civ. Code § 52.1) RETIREMENT PLAN. 5. California Pension Protection Act 21 (Cal. Const. Art. XV1 § 17 & Civ. Code § 52.1) Necessary Party In Interest. 6. Violation of Constitutional Right to Petition 22 (Cal. Const. Art. 1 §§ 2 & 3 & Civ. Code § 52.1) 7. Illegal Ultra Vires Tax, Fee or Assessment 23 (Cal. Const. Art. I, § 7 & Civ. Code § 52.1) 24 8. Promissory Estoppel and Equitable Estoppel 9. Request for Declaratory Relief 25 (Code of Civ. Pro. § 1060) 10. Request for Injunctive Relief 26 (Code of Civ. Pro. §§ 525, 526 & 526(a)) 27 11. Petition for Writ of Mandate (Code of Civ. Pro. § 1085) 28

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF AND PETITION FOR WRITT FAX Case No.

 Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges as follows:

I. INTRODUCTION

- 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory, injunctive, and writ relief in order to declare unconstitutional under the California Constitution the "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by defendants and respondents ("Defendants" or "Respondents").
- 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous employees employed by the City and who are members of the City's Federated City Employees Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or "members").
- 3. Under the California Constitution, public employee pension benefits are deferred compensation, and a public employee has a constitutionally-protected contractual and property right to receive such benefits under the terms and conditions in effect at the time such employee accepts employment.
- 4. A public employee's right to the benefits established under a pension plan vests upon commencing employment, because the right to such benefits represents a forbearance of wages or other compensation otherwise immediately earnable through the employee's ongoing service.
- These rights are vested and cannot be reduced or eliminated without impairing this
 constitutionally-protected contractual obligation and property right.
- 6. Under California law, a right to retiree health benefits and/or benefits in the form of a post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting contract and property right to receive these forms of benefits, on terms substantially equivalent to those offered by the public employer, similarly arises upon acceptance or continuation of employment. Once vested, they cannot be reduced or eliminated without impairing this constitutionally-protected contractual obligation.

	7.	In a memorandum dated December 1, 2011, City Mayor Chuck Reed submitted to the
City	Council	a series of recommendations. In relevant part, he recommended that the City Council
refra	in from d	leclaring a "Fiscal and Service Level Emergency," and further recommended the City
Coun	cil adop	t a resolution calling for a municipal election on June 5, 2012, for the purpose of placing
on th	e ballot a	an amendment to the City Charter's ("Charter") provisions governing City employee
retire	ment sec	curity.

- 8. By memorandum dated February 21, 2012, City Manager Debra Figone proposed to the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security and reducing wages for City employees who "choose" to retain the level of retirement security promised to them (and for which they have contributed a portion of their wages). Attached to the memorandum were the terms of the Act proposed for placement on the ballot.
- 9. The proposal also called for convening a June 5, 2012 special municipal election for the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must be approved by the City's electorate).
- 10. On March 6, 2012, the City Council adopted the proposal and directed placement of the Act attached thereto on the June 5, 2012 Ballot.
- 11. The Act was subsequently designated "Measure B" on the ballot (hereinafter referred to as "Measure B.")
 - 12. On June 5, 2012, the City electorate passed Measure B by referendum.
- 13. On or about July 5, 2012, the City Clerk certified the results of the June 5 election, including passage of Measure B.
- 14. Among other things, Measure B purports to amend the City Charter such that vested employees' pension benefits will be reduced and additional obligations on the part of employees will be incurred with respect to the City's obligation to fund the retirement security it has promised.
- 15. As applied to current employees participating in the Federated City Employees
 Retirement System, Measure B violates the California Constitution because it substantially impairs

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II. VENUE/JURISDICTION

- 19. Petitioner seeks declaratory relief pursuant to California Code of Civil Procedure section 1060.
- 20. Petitioner seeks injunctive relief pursuant to Code of Civil Procedure sections 526 and 527 and Civil Code section 52.1.
- 21. This court has jurisdiction over the writ relief requested in this proceeding under Code of Civil Procedure section 1085.
- 22. This action is brought under, and seeks to rectify violations of, the laws of the State of California including its Constitution.
- 23. All parties exist and reside within the County of Santa Clara, and the acts and/or omissions complained of took place within the County of Santa Clara, making this Court the appropriate venue for this action.

III. THE PARTIES

- 24. Petitioner and Plaintiff AFSCME Local 101 is an unincorporated membership association, and a labor organization as defined by Government Code section 3501.
- 25. AFSCME Local 101, including its affiliated Municipal Employees' Federation ("MEF") and Confidential Employees' Organization ("CEO"), is the recognized exclusive bargaining representative for certain non-managerial employees of the defendant and respondent City of San José.
- 26. AFSCME sucs on behalf of, and in the interest of, its members employed by the City. Such members are miscellaneous employees and are members of the City's Federated City Employees Retirement System.
- 27. Measure B purports to affect and substantially impair the rights of AFSCME's members as alleged herein.
- 28. Defendant and Respondent City of San José is a chartered municipal corporation, and an instrumentality of the State of California, which operates under the authority of the California Constitution and the San José City Charter.
 - 29. Defendant and respondent Debra Figone is sued in her official capacity as City

Manager of the City of San José. The City Charter designates the City Manager as the City's chief administrative officer responsible to the City Council for the administration of the City's affairs placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City Charter provisions, and any acts of the City Council which are subject to enforcement by her subordinates. Executing Measure B is amongst her duties.

30. The Board of Administration for the Federated City Employees Retirement System ("Board") is the Necessary Party in Interest in this case and is appointed by the City Council. The Board is responsible for managing, administering, and controlling the Federated City Employees Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose Municipal Code ("SJMC") § 3.28.100.) Action on the part of the Board is required in order to bring the Federated City Employees Retirement System within compliance with Measure B.

IV. FACTUAL ALLEGATIONS

A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

- 31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a defined benefit pension plan, and set forth a duty on the part of the City to "create[], establish[] and maintain[] ... a retirement plan or plans for all [of its] officers and employees...." (Charter § 1500.)
- 32. The Charter further prescribed the minimum benefits due to its non-excluded miscellaneous employees and required the City Council to provide for pension and other benefits through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council "may grant greater or additional benefits." (Charter § 1505(e).)
- 33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated City Employees Retirement System providing for certain benefits for covered employees. Such ordinances, and other laws of the City and State, further provide for the establishment of a Retirement Board to oversee and administer pension benefits for covered employees.
- 34. The terms and conditions of the plan of benefits prescribed by, and adopted under, these auspices is hereinafter referred to as the "Retirement System," "Federated System," or "System."

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- 35. Generally, full-time miscellaneous employees become members of the System upon acceptance of employment with the City.
- 36. Prior to Measure B, the System was funded by contributions from both members and the City under the proportions set forth in the Charter. However, member or employee contributions were never assessed or required with respect to the System's unfunded liabilities; rather members only were responsible for contributing towards the "normal cost" of their annually-earned benefits.
- 37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits under the system was to be computed annually with respect to the normal cost of each employeemember's annual benefit accrual: the Charter and City Ordinances provide that "any [non-excluded] retirement fund, system or plan for or because of current service or current service benefits ..., in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); § SJMC 3.28.710.)
- 38. Under the System, member contributions are made only on account of current service rendered (SJMC § 3.28.710), excepting limited circumstances not relevant here where employees may make additional contributions to purchase "prior service credit". (SJMC §§ 3.28.730, 3.28.740.) Again, members are not and have never been required to make contributions into the System to cover their own or others' unfunded liabilities.
- 39. Instead, under the Charter, the City has been responsible for ensuring payment of shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by the System. Such difference, actuarially determined, represents the System's "unfunded liability," which fluctuates depending on the System's investment and demographic experience.
- 40. While the City is required to make current service and limited prior scrvice contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)

¹ The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

² Meaning the purchase of pension credit for years of City service that did not qualify for pension membership

- 41. The form of benefit promised by the City and provided under the System to Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the particular employee's years of employment with the City for which the employee is eligible for credit under the System (i.e. "covered" or "credited" service). The defined benefit also included a guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension benefit.
- 42. Although the right to carn and receive such a defined benefit accrues upon accepting and continuing employment under the System, members become eligible to receive such defined benefit on the earlier of reaching age 55 and completing five years of covered service, or completing a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)
- 43. Under the System, members who become disabled and unable to perform their duties are entitled to a disability retirement benefit.
- 44. The City and the System also provide for payment and funding of health benefits for Federated System retirees.
- 45. To qualify for retiree health benefits, a member must retire under the System and have at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one hundred percent of the lowest cost plan that is available to active City employees. If a retiree does not choose the lowest cost plan, he/she must pay the difference between that premium and the premium for the lowest cost plan.
- 46. To qualify for retiree dental benefits, a member must retire for disability or service and either have credit for five years of service or more or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred percent of that members' premiums to an eligible dental plan.

47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve ("SRBR") for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan's income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [] transfer[s] the remaining ninety percent of the excess earnings to the general reserve." (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

B. MEASURE B

- 48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.
- 49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section 1514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings."

Suspension and Reduction of COLA Provision

- 50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.
- 51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three percent increase to their pension benefit after retirement. This served the purpose of ensuring that a retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI) program administered by the Social Security Administration, which of course includes a COLA component).

- 52. The COLA component of the System's retirement benefit has been funded by employee and City contributions. Specifically, the normal cost of the COLA component is funded by contributions from members and the City on the same three to eight ratio basis as has been applied to the primary pension benefit. (SJMC § 3.44.00.)
- 53. Measure B, however, provides that the City Council is authorized to suspend COLA payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current employees who retire prior to the adoption of any such resolution suspending the COLA.
- 54. Measure B further provides, that "in the event" the City Council "restores all or part of the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who opted into the VEP" (*Id.*), and it may only be restored prospectively.
- 55. Measure B therefore reduces vested retirement benefits in the form of permitting elimination and reduction of COLA for both current and future retirees.

Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")

- 56. Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve ("SRBR").
- 57. Prior to Measure B, in the event the System had a balance in its operating account after payment of administrative costs and expenses of the retirement System for the applicable fiscal year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve." (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.
- 58. Funds were held in the SRBR for the benefit of retired members, survivors of members, and survivors of retired members.
- 59. Measure B eliminates the SRBR and transfers the assets held in such account to the System's general fund.

Changes to the Obligation to Fund City Employee Retirement Programs

60. Measure B transfers to employees the responsibility for funding, in part, the System's previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part

of System members or employees. As set forth above, the Municipal Code and Charter have exclusively placed responsibility on the City for any such incurred liabilities.

- 61. Specifically, in order to retain their vested entitlement to receive their pension benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the normal cost of their annual accrued henefits.
- 62. The obligation to assume half of the City's responsibility for financing the System's unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and, accordingly, Measure B caps this obligations 16% of gross pay.
- 63. Employees who decline the obligation to assume the City's debt in this manner, under Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, on a going forward basis, are subject to a dramatic reduction in their vested right to receive their pension benefits and promised level of retirement security.
- 64. Specifically, with respect to employees who decline to assume the City's obligation for the System's unfunded liabilities, the VEP imposes a lower accrual rate for benefits; imposes a later retirement age; increases the years-of-service retirement eligibility gradually each year, indefinitely and with no limit; reduces and caps the annual COLA; redefines the term "final compensation" to exclude the member's compensation that would otherwise have been included in computing the member's pension; and redefines to the member's disadvantage the criteria applied to disability retirements.
- 65. Measure B's VEP does not present members with a "voluntary" option, as the exercise of such choice is neither volitional nor free from coercion or duress.
- 66. Further, although accepting imposition of the VEP may be more advantageous than remaining in the System as amended by Measure B, both "options" require members to accept a reduction in their vested right to receive promised retirement benefits upon retirement.
- 67. Prior to Measure B, the City's miscellaneous employees had the right to retire on the earlier of reaching age fifty-five or working for the City for thirty years. (See, e.g., SJMC § 3.28.1110(A).)

- 68. Specifically, a member's annual service retirement "allowance" or benefit was computed with respect to his/her final compensation, which was defined as the "highest average annual compensation earnable by the member during any period of twelve consecutive months of federated city service...." (SJMC § 3.28.030.11.) Such a full service retirement benefit was computed as 2.5% of such final compensation per year of service. Furthermore, one year of service was defined as "1,739 or more hours of federated city service rendered by the member in any calendar year." (SJMC § 3.28.6809(B).)
- 69. Employees who are unable to shoulder the City's obligation for the System's unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of 1.5%; "final compensation" redefined as "the average annual pensionable pay of the highest three consecutive years of service"; and an increase in the definition of a year of service to 2,080 hours. (Section 1507-A (emphasis added).)

Changes to the System's Disability Retirement Benefit

- 70. Measure B redefines the term "disability" with respect to current employees in a manner that reduces such employees' eligibility for a disability retirement under the System. It further reduces the right to a disability retirement benefit for employees required to enroll into the VEP.
- 71. Specifically, Measure B reduces the maximum benefit that a disabled retiree may receive, reduces the categories of compensation for purposes of computing the benefit; and reduces the annual COLA.
- 72. Prior to Measure B, a miscellaneous employee qualified for a "disability retirement" if his/her "disability ... render[ed] the member physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of the position then held by him and of any other position in the same classification of positions to which the city may offer to transfer him, as determined by the retirement board on the basis of competent medical opinion." (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such

positions were nevertheless entitled to a disability retirement if no such position existed or was open.

- 73. Further, members who retire because of a service-connected disability were, prior to Measure B, permitted an "annual allowance" of no less than forty percent of their compensation plus 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member's final compensation. (SJMC § 3.28.1280.)
- 74. With respect to non-service connected disabilities, miscellaneous employees who became members of the System prior to September 1, 1998, were eligible for a non-service connected disability retirement allowance equal to the normal retirement allowance less half a percent for each year the member is younger than age fifty-five. All other members receive an allowance of twenty percent of final compensation plus two percent of final compensation for each year of service in excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of service credit in excess of sixteen years, up to seventy-five percent of the member's final compensation. (SJMC § 3.28.1300.)
- 75. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC §§ 3.44.010, 3.44.160.)
- 76. Measure B substantially impairs both the eligibility to receive and the substantive benefits provided under the System's disability retirement provisions.
- 77. Specifically, Measure B redefines the term "Disability" for purposes of restricting eligibility to receive a disability retirement. Measure B narrows the definition to apply only to employees whose disability "has lasted or is expected to last for at least one year or to result in death" and "cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s)... regardless of whether there are other positions available at the time a determination is made." (Section 1509-A (emphasis added).)
- 78. Thus, under Measure B, a member who suffers debilitating injury may be denied a disability benefit is she can theoretically perform the functions of any classification, even if there is no vacancy available to accommodate such employee.
- 79. Measure B also reduces the disability benefit provided under the System.
 Specifically, service-connected disability retirees receive fifty percent "of the average annual

 pensionable pay of the highest three consecutive years of service." Further, employees become eligible for non-service connected disability retirement benefits after five years of service with the City, computed at two percent times final compensation, defined as the average highest three consecutive years. Such an employee may receive a minimum and maximum non-service connected disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)

- 80. Under Measure B the disability retirement COLA is reduced to 1.5%.
- 81. Furthermore, Measure B shifts the responsibility for determining eligibility for disability retirement benefits from the Board to "an independent panel of medical experts" subject to a "right of appeal to an administrative judge."

Funding of the City's Retiree Health Obligations

- 82. Pursuant to the SJMC, members of the Federated System who satisfy certain conditions related to service or disability retirement are entitled to receive retiree medical and dental benefits. (SJMC §§ 3.28.1950, 3.28.2000.)
- 83. Members of the System enjoy a right to retiree healthcare benefits that is vested by explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their own payroll deductions.
 - 84. Retiree healthcare benefits are a form of deferred compensation for present service.
- 85. Retiree healthcare benefits are also provided as a result of written agreements between the City and labor organizations, including Petitioner.
- 86. Prior to Measure B, AFSCME members have contributed to their retiree health insurance on a one-to-one basis with the City.
- 87. Prior to Measure B the City has not, and did not, make contributions at a level sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health obligations through a "pay-as-you-go" method, utilizing both its own and employee contributions towards providing health benefits to its retirees. Where such amounts were insufficient to pay the eity's health obligations, the City was responsible for such unfunded amounts.
 - 88. Although active employees contributed in the form of payroll deductions towards the

89. On information and belief, the City has developed an Annual Retirement Cost or "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of promised but unfunded benefits to current and future retirees (i.e. unfunded liabilities).

costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree

Healthcare Plan's ("RHC Plan") unfunded liabilities.

- 90. Beginning in or around 2009, the City imposed increasingly significant layoffs of its employees and further reduced wages of those that remained by as much as twelve percent of pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health obligations became untenable as the amount of employee contributions to the ARC necessarily declined due to such layoffs and pay reductions. The City's actions further increased the pool of retirees and consequently its retiree health obligations, as employees opted to retire rather than be placed on lay-off or continue to work under significant pay reductions.
- 91. Measure B attempts to shift the City's obligation associated with previously-incurred and promised retiree health benefits onto its current employees. Measure B seeks to make current employees responsible not only for 50% of the normal cost of their annually-incurred retiree health obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a minimum of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded liabilities").)
- 92. Upon information and belief, with respect to members of the Petitioner, such an obligation imposes an excise on current employee compensation for the payment of the City's general obligations.
- 93. Such excise is substantially greater than the amount of benefits each such employee is expected to receive under the RHC Plan. As a result, such employees are paying for benefits unassociated with their City service.
- 94. Measure B further attempts to set a framework to severely diminish the value of the "low cost plan" to which members are entitled upon retirement.

- 95. Measure B also purports to "unvest" the right to retiree health notwithstanding the fact that employee members of petitioner have directly contributed through payroll deduction to the cost of such benefits. (Measure B, Section 1512-A(b) (stating "[n]o retiree healthcare plan or benefit shall grant any vested right..."; providing City with right to "amend, change or terminate any [RHC P]lan provision").) Such provision, as alleged below, is an unconstitutional taking and impairment of contract, and violates due process, as guaranteed by the California Constitution.
- 96. Measure B also redefines the benefit provided under the RHP as "the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or [the System]." (Section 1512-A(c).) This effectively fixes employee benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed upon a union other than AFSCME by the City.
- 97. As a result, Measure B reduces the expectations of Petitioner's members by reducing the amount of Retiree health premium payment available to them upon retirement.

Retroactive Shifting of Public Debt to a Small Class of Individuals

- 98. Measure B shifts a substantial burden onto current employees for the financing of the System's, Plan's, and the RHC Plan's unfunded liabilities.
- 99. Such unfunded liabilities represent the previously-incurred obligations of the City with respect to benefits earned by current and future retirees of the City.
- 100. With respect to the System, under Measure B, employees who refuse to forego their vested right to their pension benefit must make "additional retirement contributions in increments of 4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to amortize any pension unfunded liabilities...." (Section 1506-A(b).)
- 101. Prior to Measure B, the City was and has been obligated to pay for any such unfunded liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all members of the System, obligating them to shoulder the City's debts related to the System's unfunded liabilities.
 - 102. Similarly, if a court finds Section 1506-A(b) of Measure B to be "illegal, invalid or

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unenforceable" then the City is purportedly empowered to require employees to pay down the City's

- 112. California's Constitution, Article I, section 9, prohibits the state and its instrumentalities, including the City, from passing a law that impairs the obligation of contracts ("Contracts Clause").
- 113. Modifications to public employee retirement plans affecting current employees must be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear some material relation to the theory of a pension system and its successful operation and (2) changes in a pension plan that result in a disadvantage to employee are accompanied by comparable new advantages.
- 114. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their retirement benefits, and any enhancements implemented once they begin working with the City.
- 115. Measure B substantially impairs these rights without providing a comparable advantage.
- 116. Under California law, these principles apply to changes in the method of funding of pension systems, and such changes cannot be imposed on members to their disadvantage, when there is no corresponding advantage.
- 117. Measure B, and the funding mechanisms providing for reduction in wages and shifting of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to the theory of a pension system.
- 118. Measure B interferes and impairs those contractual rights in a way that is unreasonable.
- 119. Measure B's provisions bear no material relation to the theory of a retirement system or its successful operation; they simply allow the City to escape from its obligation to provide its employees with these form of deferred compensation with which it previously entired them into its employ.
- 120. Measure B's provisions harm the effected employees without providing them with any comparable advantage, commensurate benefit, or compensation.
- 121. Therefore, Measure B violates Article I, Sect. 9 of the California Constitution as it applies to existing plan participants and is unconstitutional.

SECOND CAUSE OF ACTION

Unconstitutional Bill of Attainder

(Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1)

- 122. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 123. California's Constitution, Article I, section 9 prohibits the state and its instrumentalities, including the City, from passing bills of attainder.
- 124. Measure B is a legislative act. It was initially promulgated and put to a vote of the electorate by the City Council, and it was then approved by the City's electorate.
- 125. Measure B exclusively targets and penalizes current and future City employees ("public employees") for harsher treatment than other residents of the City.
- 126. Measure B penalizes current City employees by imposing an excise on them, unless such employees agree to forego their Constitutionally-protected rights to receive their full Pension benefit.
- 127. Such excise, consisting of up to 16% of their salary, is a severe penalty, and constitutes punishment.
- 128. Such excise inflicts punishment on this small class of individuals by subjecting them to adverse economic treatment. Measure B further punishes such employees by imposing on them a "poison pill" provision whereby if they seek to enforce their Constitutionally-protected right to be free from Bills of Attainder and other unconstitutional treatment, they are further penalized.
 - 129. Measure B is therefore is an unlawful Bill of Attainder.

THIRD CAUSE OF ACTION

Unconstitutional Taking of Private Property

(Cal. Const. Art. I § 19 and Cal. Civ. Code § 52.1)

- 130. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 131. A public entity may not take private property for public use in the absence of just compensation. (Cal. Const. art I § 19.) Nor may a public entity pass regulations having the effect of depriving individuals of their property.

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Miscellaneous employees enjoy vested contractual and property rights under the

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benefits set forth under the System, and any enhancements made during their term of employment with the City. This includes the right to a COLA and retirce healthcare benefits.

- 143. Measure B violates the members' rights to substantive due process guaranteed by the California constitution by taking their vested property rights without affording them a comparable advantage or commensurate benefit or compensation.
- 144. Measure B further constitutes an unlawful retroactive law in violation of the California Constitution's Due Process clause.

FIFTH CAUSE OF ACTION Violation of California's Pension Protection Act (Cal. Const. art. XV1 § 17 and Cal. Civ. Code § 52.1)

- 145. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 146. The California Constitution gives public sector pension or retirement systems the "sole and exclusive fiduciary responsibility" over the system's assets and its administration. (Cal. Const. art. XVI §§ 17, 17(a).) It also holds that system assets are "trust funds and shall be held for the exclusive purposes of providing benefits to participants in the pension or retirement system and their beneficiaries...." (Cal. Const. art. XVI § 17(a).)
- 147. The California Constitution states that "the retirement board of a public pension or retirement system shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system..." subject to specified conditions. (Cal. Const. art XVI § 17.)
- 148. It further provides that the Board "shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system[,]" and "it shall also have the sole and exclusive responsibility to administer the [S]ystem in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries." Furthermore, the "assets of [the System] are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the [System] and their beneficiaries and defraying reasonable expenses of administering the [S]ystem." (Cal. Const. art XVI § 17(a).)
 - 149. A Retirement Board's "duty to its participants and their beneficiaries shall take

precedence over any other duty." (Cal. Const. art XVI § 17(b).) Further, the Board's "exclusive fiduciary responsibilit[y] ... to provide for actuarial services in order to assure the competency of the assets of the" System. (Cal. Const. art XVI § 17(e). See also SJMC § 3.28.350(B).)

- 150. The City's Municipal Code grants real party in interest, the Retirement Board, exclusive control over investing and administering of the retirement fund. (SJMC § 3.28.310.)
- 151. The Code charges the Board with investing and reinvesting fund assets, which are "held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan." (SJMC § 3.28.350(A).)
- 152. Amongst its other responsibilities, the Board also determines employee eligibility for receipt of retirement benefits, the calculation of employer and member contributions, and the distribution of benefits to retirees.
- I53. The California Constitution also requires that the "members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable administrative expenses of administering the system." (Cal. Const. art. XVI § 17(a).) Also, a retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty." (Cal. Const. art. XVI § 17(b).)
- 154. Measure B requires that when the Necessary Party in Interest adopts retirement plans under the Federated System, it "minimize any risk to the City and its residents...." (Section 1513-A(a).) Requiring that Necessary Party in Interest consider the risk of such a plan to any other party besides its participants and beneficiaries directly contradicts its primary fiduciary responsibility to Plan participants and beneficiaries.
- 155. Measure B requires that all "plans adopted pursuant to the Act ... minimize any risk to the City and its residents" (Section 1513-A(a).) Again, this command contravenes the Board's primary fiduciary duty to Plan participants and beneficiaries.
- 156. Section 1513-A of Measure B sets forth certain actuarial requirements that usurp the Board's plenary power and exclusive fiduciary responsibility, as mandated by California's

Constitution, to provide for actuarial services to ensure the competency of the assets" of the System.

157. For these reasons Measure B is in conflict with and preempted by the California Constitution.

SIXTH CAUSE OF ACTION

Violation of Constitutional Right to Petition

(Cal. Const. art. I §§ 2, 3 and Cal. Civ. Code § 52.1)

- 158. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 159. Miscellaneous employees enjoy vested contractual rights to the Plan, its benefits, and any enhancements once they begin working with the City. This includes the right to pension payments with a COLA and retiree healthcare benefits.
- 160. "The people have the right to ... petition government for redress of grievances...."

 (Cal. Const. art. I § 3.)
- 161. Section 1514-A of Measure B holds that if Section 1506-A(b) "is determined to illegal, invalid or unenforceable to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings." The penalty Section 1514-A imposes for a successful challenge to Section 1506-A(b) is equally detrimental to members as the burden imposed upon them by Section 1506-A(b) itself.
- 162. The penalty imposed by Measure B for successfully mounting a legal challenge to Measure B is unrelated to the theory of a pension system and violates the Constitutionally protected right to petition.
- 163. Measure B impermissibly imposes a cost or risk upon the exercise of the right to petition the courts for redress, and its purpose and effect is to chill the assertion of constitutional rights by penalizing those who choose to exercise them.
- 164. Section 1514-A of Measure B deters members from challenging Measure B by imposing an unreasonable, burdensome, legally unauthorized, and unrelated penalty for successfully invoking the Constitutional right to petition the courts.
- 165. Measurc B discourages the exercise of a fundamental right and therefore violates Cal.

 Constitution Article I, Sections 2 and 3.

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SEVENTH CAUSE OF ACTION Illegal *Ultra Vires* Tax, Fee or Assessment (Cal. Const. Art. I, § 7 & Civ. Code § 52.1)

- 166. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 167. Measure B imposes on current and future employees the obligation to Pund the city's general obligation for the unfunded liabilities associated with its pension System and Retirce Healthcare Plan.
 - 168. Measure B accomplishes this by imposing an excise on City employee wages.
- 169. Rather than impose upon employees the cost of their own, incurred benefits, Measure B imposes on employees an excise to raise funds for the payment and funding of general obligations of the City, namely the already-incurred liabilities of future retirees and the benefits provided to current retirees.
- 170. Under California law, permissible fees must be related to the overall cost of the governmental regulation. A fee, excise or tax may not exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.
- 171. The excises imposed by Measure B are excessive as they are not related to the cost of the individual employees' benefits but also subsidize the City's own, previously incurred, obligations.
- 172. The excises further offend principles of equal protection under the California Constitution.
- 173. Statutes imposing fees, excises of taxes violate the California Constitution's equal protection clause if they select one particular class of persons for a species of taxation without rational basis.
- 174. Measure B violates the California Constitution's equal protection provision to the extent it imposes liability upon one person for the support of another not obligated to support such person. Thus, there is no rational basis for levying the excise exclusively upon members.

EIGHTH CAUSE OF ACTION Promissory Estoppel and Equitable Estoppel

- 175. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 176. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.
- 177. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.
- 178. The City, through its Municipal Code, Charter and communications with employees and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.
- 179. The City further represented that employees would earn benefits and have the right to receive a certain level of henefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.
- 180. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.
- 181. The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

NINTH CAUSE OF ACTION REQUEST FOR DECLARTORY RELIEF

(Code of Civ. Pro. § 1060)

- 182. Plaintiff hereby incorporates hy reference the preceding paragraphs as though set forth fully herein.
- 183. Measure B requires that the City Council adopt ordinances to "implement and effectuate [its] provisions...." Unless relief is granted, Measure B hecomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

OF MANDAMUS

Case No.

184.	An actual confroversy has affect and now exists between I lambit and Detendants as
to Defendants	duties with respect to implementation of Measure B.
185.	Plaintiff contends that Measure B violates the "Contracts Clause" and prohibition on
"Bills of Attai	nder" (Cal. Const. art. I § 9), "Taking Clause" (Cal. Const. art. I § 19), "Due Process
Clause" (Cal.	Const. art. I § 7), "Pension Protection Act" (Cal. Const. Art. XVI § 17), prohibition on
unlawful excis	ses (Cal. Const. art. I § 7), and right to petition the courts (Cal. Const. art. 1 §§ 1, 2)
pursuant to the	e state Constitution.
186.	Plaintiff is informed and believes that the City disputes the allegations contained
within this Co	mplaint and Petition and contends that it has a legal duty to implement Measure B as a
result of its ad	option by the voters of Defendant City.
187.	Plaintiff desires a judicial determination of their rights and a declaration of whether
Measure B vio	plates the aforementioned sections of the California Constitution, the City Charter,
SJMC, and/or	provisions of the Plan.
188.	A judicial determination is necessary and proper at this time under these
eircumstances	in order to determine the duties and obligations of the parties with respect to
Measure B.	
	TENTH CAUSE OF ACTION
	REQUEST FOR INJUNCTIVE RELIEF (Code of Civ. Pro. §§ 525, 526, and 526(a))
189.	Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth
fully herein.	
190.	Plaintiff and groups, residents, registered voters, and taxpayers of the City will suffer
irreparable har	m as a result of the City's expenditure of staff time and taxpayer funds in connection
with implemer	ntation of Measure B.
191.	Furthermore, members represented by AFSCME will suffer irreparable hann from the
constitutional	violations at issue.
192.	Plaintiff can demonstrate a high-likelihood of success on the merits of its claim that
Measure B vio	lates the aforementioned provisions of the California Constitution, the City Charter,
-	le, and agreements between the parties.
	DEGLARATION AND DIRECTIVE BELLEE AND DETITION FOR WRIT 271682 4 dec

OF MANDAMUS

Case No.

EXHIBIT B

TEAGUE P. PATERSON, SBN 226659 1 VISHTASP M. SOROUSHIAN, SBN 278895 2 BEESON, TAYER & BODINE, APC 483 Ninth Street, 2nd Floor 3 Oakland, CA 94607-4051 (510) 625-9700 Telephone: Facsimile: (510) 625-8275 5 TPaterson@beesontayer.com Email: VSoroushian@beesontayer.com 6 Attorneys for Plaintiff and Petitioner, 7 AFSCME LOCAL 101 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 'IN AND FOR THE COUNTY OF SANTA CLARA LEAP CASE. 112 ON 225926 10 AMERICAN FEDERATION OF STATE, Case No. 1-12-CV-227864; COUNTY, AND MUNICIPAL EMPLOYEES. Consolidated with Case No. I-12-CV-225926 11 [Consolidated with cases, nos. 1-12-CV-225928, LOCAL 101, on behalf of its members, 1-12-CV-226574 and 1-12-CV227864] 12 Plaintiff and Petitioner. 13 FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE 14 RELIEF AND PETITION FOR WRIT OF CITY OF SAN JOSÉ and DEBRA FIGONE in **MANDAMUS** 15 her official capacity as City Manager, 1. Unconstitutional Impairment of Contract 16 (Cal. Const. Art. 1 § 9 & Civ. Code § 52.1) Defendants and Respondents, 17 2. Unconstitutional Bill of Attainder (Cal. Const. Art. 1 § 9 & Civ. Code § 52.1) THE BOARD OF ADMINISTRATION FOR 18 3. Unconstitutional Taking of Private Property THE FEDERATED CITY EMPLOYEES (Cal. Const. Art. 1 § 19 & Civ. Code § 52.1) RETIREMENT PLAN. 19 4. Unconstitutional Taking of Private Property Without Due Process 20 Necessary Party In Interest. (Cal. Const. art. I § 7 & Civ. Code § 52.1) 21 5. California Pension Protection Act (Cal. Const. Art. XVI § 17 & Civ. Code § 52.1) 22 6. Violation of Constitutional Right to Petition (Cal. Const. Art. I §§ 2 & 3 & Civ. Code § 52.1) 23 7. Illegal Ultra Vires Tax, Fee or Assessment (Cal. Const. Art. I, § 7 & Civ. Code § 52.1) 24 8. Promissory Estoppel and Equitable Estoppel 25 9. Request for Declaratory Relief (Code of Civ. Pro. § 1960) 26 10. Request for Injunctive Relief (Code of Civ. Pro. §§ 525, 526 & 526(a)) 27 11. Petition for Writ of Mandate (Code of Civ. Pro. § 1085) 28 AFSCME'S FIRST AMENDED COMPLAINT AND WRIT PETITION 314807.doc

Case No. 227864; Consolidated Case No. 1-12-CV-225926

Plaintiff American Federation of State, County, and Municipal Employees, Local 101 alleges as follows:

I. INTRODUCTION

- 1. Plaintiff and petitioner ("Plaintiff" or "Petitioner") brings this suit for declaratory, injunctive, and writ relief in order to declare unconstitutional under the California Constitution the "Sustainable Retirement Benefits and Compensation Act" ("Act" or "Measure B"), approved by the electorate of the City of San José ("City") on June 5, 2012, and to bar its implementation by defendants and respondents ("Defendants" or "Respondents").
- 2. Plaintiff Local 101 of the American Federation of State, County, and Municipal Employees ("AFSCME" or "Union") is the representative of certain groups of miscellaneous employees employed by the City and who are rnembers of the City's Federated City Employees Retirement Plan (collectively referred to herein as "miscellaneous employees," "employees," or "members").
- 3. Under the California Constitution, public employee pension benefits are deferred compensation, and a public employee has a constitutionally-protected contractual and property right to receive such benefits under the terms and conditions in effect at the time such employee accepts employment.
- 4. A public employee's right to the benefits established under a pension plan vests upon commencing employment, because the right to such benefits represents a forbearance of wages or other compensation otherwise immediately earnable through the employee's ongoing service.
- 5. These rights are vested and cannot be reduced or eliminated without impairing this constitutionally-protected contractual obligation and property right.
- 6. Under California law, a right to retiree health benefits and/or benefits in the form of a post-retirement cost of living adjustments ("COLA") may also vest by implication. The resulting contract and property right to receive these forms of benefits, on terms substantially equivalent to those offered by the public employer, similarly arises upon acceptance or continuation of

employment. Once vested, they cannot be reduced or eliminated without impairing this constitutionally-protected contractual obligation.

- 7. In a memorandum dated December 1, 2011, City Mayor Chuek Reed submitted to the City Council a series of recommendations. In relevant part, he recommended that the City Council refrain from declaring a "Fiscal and Service Level Emergency," and further recommended the City Council adopt a resolution calling for a municipal election on June 5, 2012, for the purpose of placing on the ballot an amendment to the City Charter's ("Charter") provisions governing City employee retirement security.
- 8. By memorandum dated February 21, 2012, City Manager Debra Figone proposed to the Mayor and City Council an Act providing for such amendments to the City Charter, authorizing promulgation of ordinances for the purpose of, *inter alia*, reducing City employee retirement security and reducing wages for City employees who "choose" to retain the level of retirement security promised to them (and for which they have contributed a portion of their wages). Attached to the rnemorandum were the terms of the Act proposed for placement on the ballot.
- 9. The proposal also called for convening a June 5, 2012 special municipal election for the purpose of placing the Act on the ballot for referendum (as amendments to the City Charter must be approved by the City's electorate).
- 10. On March 6, 2012, the City Council adopted the proposal and directed placement of the Act attached thereto on the June 5, 2012 Ballot.
- 11. The Act was subsequently designated "Measure B" on the ballot (hereinafter referred to as "Measure B.")
 - 12. On June 5, 2012, the City electorate passed Measure B by referendum.
- 13. On or about July 5, 2012, the City Clerk certified the results of the June 5 election, including passage of Measure B.
- 14. Among other things, Measure B purports to amend the City Charter such that vested employees' pension benefits will be reduced and additional obligations on the part of employees will be incurred with respect to the City's obligation to fund the retirement security it has promised.

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	15.	As applied to current employees participating in the Federated City Employees
Retir	ement S	ystem, Measure B violates the California Constitution because it substantially impairs
the at	ffected e	employees' right to retirement benefits that vested when they commenced employment
and/o	r contin	ued their employment with the City.
	16.	For example, Measure B violates the California Constitution with respect to current
emple	oyees be	cause it, inter alia:

- a. Reduces and eliminates portions of employee retirement benefits that are or have
- b. Imposes conditions subsequent on the right to receive retirement benefits already
- c. Is an unconstitutional bill of attainder, as it shifts the burden of financing public debt upon a small class of private parties, and its purpose is to punish such individuals for refusal to
- d. Constitutes an unconstitutional taking of private property for public use without
- e. Constitutes an unconstitutional taking of private property for public use without
- f. Is an unconstitutional retroactive law as it subjects employees to liabilities previously incurred by the City, and obligates active employees to fund liabilities previously incurred by the
 - g. Is unconstitutional because it violates the "California Pension Protection Act";
- h. Violates employee-members' constitutional right to petition the courts by imposing a penalty on employee-members who successfully challenge the legality of the Act through a "poison
- i. Imposes an illegal and improper tax by imposing on a specific group of individuals an excise of wages for the purpose of funding the City's general obligations, and such tax or excise is targeted at those individuals who can neither (i) afford to relinquish their constitutionally-protected

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- 27. Measure B purports to affect and substantially impair the rights of AFSCME's members as alleged herein.
- 28. Defendant and Respondent City of San José is a chartered municipal corporation, and an instrumentality of the State of California, which operates under the authority of the California Constitution and the San José City Charter.
- 29. Defendant and respondent Debra Figone is sued in her official capacity as City Manager of the City of San José. The City Charter designates the City Manager as the City's chief administrative officer responsible to the City Council for the administration of the City's affairs placed under her charge. Ms. Figone's duties include but are not limited to executing all laws, City Charter provisions, and any acts of the City Council which are subject to enforcement by her subordinates. Executing Measure B is amongst her duties.
- 30. The Board of Administration for the Federated City Employees Retirement System ("Board") is the Necessary Party in Interest in this case and is appointed by the City Council. The Board is responsible for managing, administering, and controlling the Federated City Employees Retirement System and the retirement fund. (California Constitution, art. XVI, sect. 17; San Jose Municipal Code ("SJMC") § 3.28.100.) Action on the part of the Board is required in order to bring the Federated City Employees Retirement System within compliance with Measure B.

IV. FACTUAL ALLEGATIONS

A. THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

- 31. Prior to Measure B, and at all times relevant hereto, the City Charter provided for a defined benefit pension plan, and set forth a duty on the part of the City to "create[], establish[] and maintain[] ... a retirement plan or plans for all [of its] officers and employees...." (Charter § 1500.)
- 32. The Charter further prescribed the minimum benefits due to its non-excluded miscellaneous employees and required the City Council to provide for pension and other benefits through ordinance. (Charter § 1505.) It also stated that in its discretion, the City Council "may grant greater or additional benefits." (Charter § 1505(e).)
- 33. Pursuant to duly-enacted ordinances, Defendant adopted and established a Federated City Employees Retirement System providing for certain benefits for covered employees. Such

 ordinances, and other laws of the City and State, further provide for the establishment of a Retirement Board to oversee and administer pension benefits for covered employees.

- 34. The terms and conditions of the plan of benefits prescribed by, and adopted under, these auspices is hereinafter referred to as the "Retirement System," "Federated System," or "System."
- 35. Generally, full-time miscellaneous employees become members of the System upon acceptance of employment with the City.
- 36. Prior to Measure B, the System was funded by contributions from both members and the City under the proportions set forth in the Charter. However, member or employee contributions were never assessed or required with respect to the System's unfunded liabilities; rather members only were responsible for contributing towards the "normal cost" of their annually-earned benefits.
- 37. Therefore, prior to Measure B, the City Charter provided that the funding of benefits under the system was to be computed annually with respect to the normal cost of each employee-member's annual benefit accrual: the Charter and City Ordinances provide that "any [non-excluded] retirement fund, system or plan for or because of current service or current service benefits ..., in relation to and as compared with contributions made by the City for such purpose, shall not exceed the ratio of three (3) for [miscellaneous] employees to eight (8) for the City." (Charter § 1505(c); § SJMC 3.28.710.)
- 38. Under the System, member contributions are made only on account of current service rendered (SJMC § 3.28.710), excepting limited circumstances not relevant here where employees may make additional contributions to purchase "prior service credit". (SJMC §§ 3.28.730, 3.28.740.) Again, members are not and have never been required to make contributions into the System to cover their own or others' unfunded liabilities.
- 39. Instead, under the Charter, the City has been responsible for ensuring payment of shortfalls between the plan's assets and the actuarially-determined liability for all benefits owed by

³ The normal cost is the actuarially determined cost of new benefits earned each year by active participants.

² Meaning the purchase af pension credit far years af City service that did not qualify for pension membership

the System. Such difference, actuarially determined, represents the System's "unfunded liability," which fluctuates depending on the System's investment and demographic experience.

- 40. While the City is required to make current service and limited prior service contributions into the retirement system on behalf of members (SJMC §§ 3.28.850, 3.28.890), it is and has been obligated to cover the unfunded liabilities of the retirement system (SJMC § 3.28.880.)
- 41. The form of benefit promised by the City and provided under the System to Petitioner's members was a defined benefit consisting of 2.5% of compensation multiplied by the particular employee's years of employment with the City for which the employee is eligible for credit under the System (i.e. "covered" or "credited" service). The defined benefit also included a guaranteed cost of living adjustment, or "COLA," consisting of a 3% annual increase in the pension benefit.
- 42. Although the right to earn and receive such a defined benefit accrues upon accepting and continuing employment under the System, members become eligible to receive such defined benefit on the earlier of reaching age 55 and completing five years of covered service, or completing a full 30 years of service regardless of age. (SJMC 3.28.1110(A).)
- 43. Under the System, members who become disabled and unable to perform their duties are entitled to a disability retirement benefit.
- 44. The City and the System also provide for payment and funding of health benefits for Federated System retirees.
- 45. To qualify for retiree health benefits, a member must retire under the System and have at least fifteen years of service or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree may be eligible for benefits if he/she "[w]ould be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply." (SJMC 3.28.1950(A)(3).) If a retiree qualifies for the plan, the retirement system pays one hundred percent of the lowest cost plan that is available to active City employees. If a retiree does not choose the lowest cost plan, he/she must pay the difference between that premium and the premium for the lowest cost plan.

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 46. To qualify for retiree dental benefits, a member must retire for disability or service and either have credit for five years of service or more or receive an allowance that is at least 37.5% of final compensation. Furthermore, a retiree is eligible for benefits if he/she "would be receiving an allowance equal to at least [37.5%] of [his/her] final compensation [] if the workers' compensation offset ... did not apply...." If a retiree qualifies for the plan, the retirement fund pays one hundred percent of that members' premiums to an eligible dental plan.

47. The City and the System also provide for a Supplemental Benefit Retiree Benefit Reserve ("SRBR") for the benefit of retired members, survivors of members, and survivors of retired members retired members. If the balance remaining in the Plan's income account [after payment of administrative costs and expenses of the retirement System for the applicable fiscal year] is greater than zero, the [B]oard ... transfer[s] ten percent of the excess earnings to the [SRBR], and [] transfer[s] the remaining ninety percent of the excess earnings to the general reserve." (SJMC 3.28.340(D).) Furthermore, interest on these funds and excess funds are deposited in the SRBR.

B. MEASURE B

- 48. Measure B seeks to reduce the retirement security of Petitioner's members while simultaneously shifting obligations and debts already incurred by the City unto a small class of individuals, including Petitioner's members.
- 49. Measure B further seeks to punish members who either challenge its legality or resist the reduction of the retirement benefit to which they are vested and entitled. Specifically, Section I514-A of Measure B provides that if any of Measure B's terms are "determined to be illegal, invalid or unenforceable as to Current Employees[,]" current employees' salaries shall be reduced by "an equivalent amount of savings."

Suspension and Reduction of COLA Provision

50. With respect to the COLA component of the System's defined retirement benefit, Measure B authorizes the City Council to eliminate or "suspend" payment of the COLA. By its terms Measure B provides the City Council with discretion to suspend the COLA for a period of five years and thereafter may reduce by half the COLA benefit, or continue the suspension.

- 51. Prior to Measure B, miscellaneous employees enjoyed a vested right to an annual three percent increase to their pension benefit after retirement. This served the purpose of ensuring that a retiree's pension kept pace with inflation. (SJMC § 3.400.160.) (It should be noted that System members do not participate in the federal Old Age, Survivor and Disability Insurance (OASDI) program administered by the Social Security Administration, which of course includes a COLA component).
- 52. The COLA component of the System's retirement benefit has been funded by employee and City contributions. Specifically, the normal cost of the COLA component is funded by contributions from members and the City on the same three to eight ratio basis as has been applied to the primary pension benefit. (SJMC § 3.44.00.)
- 53. Measure B, however, provides that the City Council is authorized to suspend COLA payments "in whole or in part" until (and if) "[the City Council] determines that the fiscal emergency has eased." (Section 1510-A). Upon information and belief, such provision applies equally to current employees who retire prior to the adoption of any such resolution suspending the COLA.
- 54. Measure B further provides, that "in the event" the City Council "restores all or part of the COLA" it shall not exceed 3% for "current employees" or "1.5% for Current Employees who opted into the VEP" (Id.), and it may only be restored prospectively.
- 55. Measure B therefore reduces vested retirement benefits in the form of permitting elimination and reduction of COLA for both current and future retirees.

Elimination of the Supplemental Benefit Retiree Benefit Reserve ("SRBR")

- Measure B eliminates of the System's Supplemental Benefit Retiree Benefit Reserve ("SRBR").
- 57. Prior to Measure B, in the event the System had a balance in its operating account after payment of administrative costs and expenses of the retirement System for the applicable fiscal year, the Board of Retirement was required to "transfer ten percent of the excess earnings to the [SRBR], and [to] transfer the remaining ninety percent of the excess earnings to the general reserve." (SJMC 3.28.340(D).) Furthermore, interest on funds and excess funds were deposited in the SRBR.

- 58. Funds were held in the SRBR for the benefit of retired members, survivors of members, and survivors of retired members.
- 59. Measure B eliminates the SRBR and transfers the assets held in such account to the System's general fund.

Changes to the Obligation to Fund City Employee Retirement Programs

- 60. Measure B transfers to employees the responsibility for funding, in part, the System's previously-incurred unfunded liability. Such an obligation has not, heretofore, existed on the part of System members or employees. As set forth above, the Municipal Code and Charter have exclusively placed responsibility on the City for any such incurred liabilities.
- 61. Specifically, in order to retain their vested entitlement to receive their pension benefits, members must personally agree to assume a *pro rata* portion of up to 50% of the City's obligation for the System's unfunded liabilities, in addition to their obligation to make payment of the normal cost of their annual accrued benefits.
- 62. The obligation to assume half of the City's responsibility for financing the System's unfunded liabilities has been computed by the City to equal approximately 16% of gross pay and, accordingly, Measure B caps this obligation at 16% of an employee's gross pay.
- Measure B, are placed into a "Voluntary Election Plan" or "VEP." Such employees, and only those employees who wish not to, or are economically unable to, relinquish their earned and promised pension benefits must, on a going forward basis, pay to the city an excise or assessment against their wages. Measure B designates such funds towards payment of the City's general obligations associated with its accrued past pension liabilities. Those employees who cannot afford to pay the City's excise of 16% of their wages are forced to accept a reduction in their vested right to receive their pension benefits and promised level of retirement security.
- 64. Specifically, with respect to employees who decline to assume a portion of the City's obligation for the System's unfunded liabilities, or are unable to afford the excise imposed against them: The VEP imposes a lower accrual rate for benefits; imposes a later retirement age; increases the years-of-service retirement eligibility gradually each year, indefinitely and with no limit; reduces

and caps the annual COLA; redefines the term "final compensation" to exclude the member's compensation that would otherwise have been included in computing the member's pension; and redefines to the member's disadvantage the criteria applied to disability retirements.

- 65. The amount of the wage excise is unrelated to the particular employee's cost of benefits and is not particularized to the employee.
- 66. Measure B's VEP does not present members with a "voluntary" option, as the exercise of such choice is neither volitional nor free from coercion or duress.
- 67. Further, although accepting imposition of the VEP may be more advantageous than remaining in the System as amended by Measure B, both "options" require members to accept a reduction in their vested right to receive promised retirement benefits upon retirement. Those that cannot afford to pay upwards of 16% of their wages to the City's unfunded liability are required to forego their earned and promised pension rights.
- 68. Prior to Measure B, the City's miscellaneous employees had the right to retire on the earlier of reaching age fifty-five or working for the City for thirty years. (See, e.g., SJMC § 3.28.1110(A).)
- 69. Specifically, a member's annual service retirement "allowance" or benefit was computed with respect to his/her final compensation, which was defined as the "highest average annual compensation earnable by the member during any period of twelve consecutive months of federated city service...." (SJMC § 3.28.030.11.) Such a full service retirement benefit was computed as 2.5% of such final compensation per year of service. Furthermore, one year of service was defined as "1,739 or more hours of federated city service rendered by the member in any calendar year." (SJMC § 3.28.6809(B).)
- 70. Employees who are unable to shoulder the City's obligation for the System's unfunded liabilities must accept, under the VEP, a reduced benefit accrual rate of two percent of final compensation; an increased retirement age of sixty-two; an ever-increasing years-of-service retirement (which increases by six months each year, starting in July of 2017); a reduced COLA of 1.5%; "final compensation" redefined as "the average annual pensionable pay of the highest three

consecutive years of service"; and an increase in the definition of a year of service to 2,080 hours. (Section 1507-A (emphasis added).)

Changes to the System's Disability Retirement Benefit

- 71. Measure B redefines the term "disability" with respect to current employees in a manner that reduces such employees' eligibility for a disability retirement under the System. It further reduces the right to a disability retirement benefit for employees required to enroll into the VEP.
- 72. Specifically, Measure B reduces the maximum benefit that a disabled retiree may receive, reduces the categories of compensation for purposes of computing the benefit; and reduces the annual COLA.
- 73. Prior to Measure B, a miscellaneous employee qualified for a "disability retirement" if his/her "disability ... render[ed] the member physically or mentally incapable of continuing to satisfactorily assume the responsibilities and perform the duties and functions of the position then held by him and of any other position in the same classification of positions to which the city may offer to transfer him, as determined by the retirement board on the basis of competent medical opinion." (SJMC § 3.28.1210.) Prior to Measure B, disabled employees who could fill such positions were nevertheless entitled to a disability retirement if no such position existed or was open.
- 74. Further, members who retire because of a service-connected disability were, prior to Measure B, permitted an "annual allowance" of no less than forty percent of their compensation plus 2.5% for each year of service beyond sixteen, to a maximum of seventy-five percent of the member's final compensation. (SJMC § 3.28.1280.)
- 75. With respect to non-service connected disabilities, miscellaneous employees who became members of the System prior to September 1, 1998, were eligible for a non-service connected disability retirement allowance equal to the normal retirement allowance less half a percent for each year the member is younger than age fifty-five. All other members receive an allowance of twenty percent of final compensation plus two percent of final compensation for each year of service in excess of six years, but less than sixteen years, plus 2.5% of final compensation for each year of

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service credit in excess of sixteen years, up to seventy-five percent of the member's final compensation. (SJMC § 3.28.1300.)

- 76. Prior to Measure B, disability retirees received an annual three percent COLA. (SJMC §§ 3.44.010, 3.44.160.)
- 77. Measure B substantially impairs both the eligibility to receive and the substantive benefits provided under the System's disability retirement provisions.
- 78. Specifically, Measure B redefines the term "Disability" for purposes of restricting eligibility to receive a disability retirement. Measure B narrows the definition to apply only to employees whose disability "has lasted or is expected to last for at least one year or to result in death" and "cannot perform any other jobs described in the City's classification plan because of his or her medical condition(s)... regardless of whether there are other positions available at the time a determination is made." (Section 1509-A (emphasis added).)
- 79. Thus, under Measure B, a member who suffers debilitating injury may be denied a disability benefit is she can theoretically perform the functions of any classification, even if there is no vacancy available to accommodate such employee.
- 80. Measure B also reduces the disability benefit provided under the System. Specifically, service-connected disability retirees receive fifty percent "of the average annual pensionable pay of the highest three consecutive years of service." Further, employees become eligible for non-service connected disability retirement benefits after five years of service with the City, computed at two percent times final compensation, defined as the average highest three consecutive years. Such an employee may receive a minimum and maximum non-service connected disability retirement of twenty percent and fifty percent, respectively. (Section 1507-A(e).)
 - Under Measure B the disability retirement COLA is reduced to 1.5%.
- 82. Furthermore, Measure B shifts the responsibility for determining eligibility for disability retirement benefits from the Board to "an independent panel of medical experts" subject to a "right of appeal to an administrative judge."

Funding af the City's Retiree Health Obligations

- 83. Pursuant to the SJMC, members of the Federated System who satisfy certain conditions related to service or disability retirement are entitled to receive retiree medical and dental benefits. (SJMC §§ 3.28.1950, 3.28.2000.)
- 84. Members of the System enjoy a right to retiree healthcare benefits that is vested by explicit or implied contract. Indeed, employees contribute to the cost of retiree health through their own payroll deductions.
 - 85. Retiree healthcare benefits are a form of deferred compensation for present service.
- 86. Retiree healthcare benefits are also provided as a result of written agreements between the City and labor organizations, including Petitioner.
- 87. Prior to Measure B, AFSCME members have contributed to their retiree health insurance on a one-to-one basis with the City.
- 88. Prior to Measure B the City has not, and did not, make contributions at a level sufficient to fully prefund its retiree health obligations. Rather, the City paid for its retiree health obligations through a "pay-as-you-go" method, utilizing both its own and employee contributions towards providing health benefits to its retirees. Where such amounts were insufficient to pay the city's health obligations, the City was responsible for such unfunded amounts.
- 89. Although active employees contributed in the form of payroll deductions towards the costs of retiree healthcare, they were not responsible for funding the full cost of the Retiree Healthcare Plan's ("RHC Plan") unfunded liabilities.
- 90. On information and belief, the City has developed an Annual Retirement Cost or "ARC" that incorporates the City's predicted normal cost of retiree health obligations and the cost of promised but unfunded benefits to current and future retirees (i.e. unfunded liabilities).
- 91. Beginning in or around 2009, the City imposed increasingly significant layoffs of its employees and further reduced wages of those that remained by as much as twelve percent of pensionable pay. As a result, the City's pay-as-you go method of funding its retiree health obligations became untenable as the amount of employee contributions to the ARC necessarily declined due to such layoffs and pay reductions. The City's actions further increased the pool of

retirees and consequently its retiree health obligations, as employees opted to retire rather than be placed on lay-off or continue to work under significant pay reductions.

- 92. Measure B attempts to shift the City's obligation associated with previously-incurred and promised retiree health benefits onto its current employees. Measure B seeks to make current employees responsible not only for 50% of the normal cost of their annually-incurred retiree health obligations, but also for the City's unfunded liabilities with respect to all of its retiree healthcare obligations. (Measure B, § 1512-A(a) (making active employees responsible for contributing "a minimum of [fifty percent] of the cost of retiree healthcare, including both normal cost and unfunded liabilities").)
- 93. Upon information and belief, with respect to members of the Petitioner, such an obligation imposes an excise on current employee compensation for the payment of the City's general obligations.
- 94. Such excise is substantially greater than the amount of benefits each such employee is expected to receive under the RHC Plan. As a result, such employees are paying for benefits unassociated with their City service.
- 95. In addition, the excise is imposed for the stated purpose of paying the City's general obligations, that is, the unfunded liabilities of the City retirement system
- 96. Measure B further attempts to set a framework to severely diminish the value of the "low cost plan" to which members are entitled upon retirement.
- 97. Measure B also purports to "unvest" the right to retiree health notwithstanding the fact that employee members of petitioner have directly contributed through payroll deduction to the cost of such benefits. (Measure B, Section 1512-A(b) (stating "[n]o retiree healthcare plan or benefit shall grant any vested right..."; providing City with right to "amend, change or terminate any [RHC P]lan provision").) Such provision, as alleged below, is an unconstitutional taking and impairment of contract, and violates due process, as guaranteed by the California Constitution.
- 98. Measure B also redefines the benefit provided under the RHP as "the medical plan which has the lowest monthly premium available to any active employee in either the Police and Fire Department Retirement Plan or [the System]." (Section 1512-A(c).) This effectively fixes employee

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pensions. By imposing such fine on only those who do not accept the City's demands to amend its pension obligations, the City is imposing a punishment or penalty on a select group of individuals.

104. Prior to Measure B, the City was and has been obligated to pay for any such unfunded

liabilities. Further, until the VEP is implemented, Section 1506-A of Measure B governs all members of the System, obligating them to shoulder the City's debts related to the System's

benefits to the lowest cost plan City-wide, whether or not that plan was bargained for or imposed

the amount of Retiree health premium payment available to them upon retirement.

Retroactive Shifting of Public Debt to a Small Class of Individuals

of the System's, Plan's, and the RHC Plan's unfunded liabilities.

respect to benefits earned by current and future retirees of the City.

amortize any pension unfunded liabilities..." (Section 1506-A(b).)

As a result, Measure B reduces the expectations of Petitioner's members by reducing

Measure B shifts a substantial burden onto current employees for the financing

Such unfunded liabilities represent the previously-incurred obligations of the City with

With respect to the System, under Measure B, employees who refuse to forego their

The intent, purpose and effect of Measure B is to impose a fine on those employees

vested right to their pension benefit must make "additional retirement contributions in increments of

4% of pensionable pay per year, up to a maximum of 16%, but no more than 50% of the costs to

who refuse to relinquish their constitutionally-protected right to receive their earned and promised

upon a union other than AFSCME by the City.

unfunded liabilities.

105. Similarly, if a court finds Section 1506-A(b) of Measure B to be "illegal, invalid or unenforceable" then the City is purportedly empowered to require employees to pay down the City's obligations for the System's unfunded liabilities. (Section 1514-A of Measure B.)

106. Measure B places on current employees the responsibility of funding the cost of their benefits in addition to the unfunded liabilities not associated with their own service, including the already-accrued retiree health benefits obligations and the benefits payable to current retirees.

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	116.	California's Constitution, Article I, section 9, prohibits the state and its
instru	mentalit	ies, including the City, from passing a law that impairs the obligation of contracts
("Con	tracts C	lause").

- 117. Modifications to public employee retirement plans affecting current employees must be reasonable under California's Contracts Clause. Changes can be reasonable only if (1) they bear some material relation to the theory of a pension system and its successful operation and (2) changes in a pension plan that result in a disadvantage to employee are accompanied by comparable new advantages.
- 118. Miscellaneous employees enjoy vested contractual rights to the System, Plan, their retirement benefits, and any enhancements implemented once they begin working with the City.
- 119. Measure B substantially impairs these rights without providing a comparable advantage.
- 120. Under California law, these principles apply to changes in the method of funding of pension systems, and such changes cannot be imposed on members to their disadvantage, when there is no corresponding advantage.
- 121. Measure B, and the funding mechanisms providing for reduction in wages and shifting of liabilities to a small class of individuals who derive no benefits from such liabilities, is contrary to the theory of a pension system.
- 122. Measure B interferes and impairs those contractual rights in a way that is unreasonable.
- 123. Measure B's provisions bear no material relation to the theory of a retirement system or its successful operation; they simply allow the City to escape from its obligation to provide its employees with these form of deferred compensation with which it previously enticed them into its employ.
- 124. Measure B's provisions harm the effected employees without providing them with any comparable advantage, commensurate benefit, or compensation.
- 125. Therefore, Measure B violates Article 1, Seet. 9 of the California Constitution as it applies to existing plan participants and is unconstitutional.

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SECOND CAUSE OF ACTION Unconstitutional Bill of Attainder

(Cal. Const. Art. I § 9 and Cal. Civ. Code § 52.1)

- Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth 126. fully herein.
- California's Constitution, Article I, section 9 prohibits the state and its 127. instrumentalities, including the City, from passing bills of attainder.
- Measure B is a legislative act. It was initially promulgated and put to a vote of the electorate by the City Council, and it was then approved by the City's electorate.
- Measure B's penalty provisions -- which impose against those employees who do not voluntarily relinquish their right to receive their earned and promised pension a 16% wage deduction -- affects their lives and is a confiscation of property, earned wages to which they would otherwise be entitled.
- 130. A bill of attainder includes legislative acts that unconstitutionally impact property rights.
- Measure B exclusively targets and penalizes current and future City employees 131. ("public employees") for harsher treatment than other residents of the City.
- Measure B imposes a forfeiture or fine on a select class of individuals for the purpose 132. of punishing them for refusing to relinquish their constitutionally-protected right to receive the earned and promised pension.
- Although the City asserts this fine is necessary to its budget, fairer methods of 133. generating revenue exist for the purpose of paying the City's general obligations.
- Further, although the City and the Measure indicate these provisions are necessary to 134. ensure parks, libraries and other services, it has sought to provide to its management employees, employees not represented by Petitioner, retroactive salary increases.
- 135. Upon information and belief, the City has sought to impose this fine against petitioners' members, among others, because petitioner and its members have (I) refused to voluntarily forego pension rights previously sought by the City; (2) have filed unfair labor practice charges against it before the Public Employees Relations Board.

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- 136. In enacting Measure B, at the outset, the City adopted and drafted ballot language that was deemed by the Sixth District Court of Appeals as "charged," "biased" and not neutral. The City's intent to punish City employees is reflected in internal City 137. communications. For example, an email from City Retirement Services Director to the City Manager and others, described a large percentage of City employees as "totally useless" and "marginally employed" and that "benefit and salary reductions are less important." 138. The City and its agents have indicated that they are waging a "war" on Petitioner. 139. Measure B was adopted and passed to punish petitioner and more particularly, those members/employees who do not agree to a reduction to their earned and promised pension. 140. By imposing a fine against employees who do not agree to relinquish their constitutionally-protected right to receive their earned and promised pension, Measure B singles them out for punishment. 141. Because Measure B requires employees to relinquish components of their vested benefits or suffer a dramatic fine imposed against their wages, up to 16%. Such wage reduction, for Petitioners' members who have already received a 12% reduction to their pay since 2011, will force them either (a) from their jobs or (b) to relinquish the pension rights, as they are unable to support themselves or their families on their post-excise income.
 - 142. Under the constitution, a fine is a characteristically punitive sanction.
 - 143. The fine imposed by Measure B is intertwined with employees' exercise of their constitutional right.
 - 144. Measure B penalizes current City employees by imposing the penalty of a fine, unless such employees agree to forego their Constitutionally-protected rights to receive their full Pension benefit.
 - 145. Such excise, consisting of up to 16% of their salary, is a severe penalty, and is imposed out of a punitive motivation.
 - 146. Such punishment is inflicted on this small class of individuals by subjecting them to adverse economic treatment. Measure B further punishes such employees by imposing on them a

"poison pill" provision whereby if they seek to enforce their Constitutionally-protected right to be free from Bills of Attainder and other unconstitutional treatment, they are further penalized.

147. Measure B is therefore an unlawful Bill of Attainder.

THIRD CAUSE OF ACTION

Unconstitutional Taking of Private Property

(Cal. Const. Art. I § 19 and Cal. Civ. Code § 52.1)

- 148. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 149. A public entity may not take private property for public use in the absence of just compensation. (Cal. Const. art I § 19.) Nor may a public entity pass regulations having the effect of depriving individuals of their property.
- 150. Miscellaneous employees enjoy vested contractual and property rights under the System, once they begin work for the City.
 - 151. Measure B is a taking of such rights.
- 152. Similarly, retirement benefits promised in order to induce employment with the City are a form of deferred compensation. Measure B constitutes a taking of such property.
- 153. Measure B has a drastic fiscal impact on public employees because it significantly abridges their vested right to receive certain retirement benefits.
- 154. Furthermore, Measure B constitutes an unconstitutional taking because it divests public employees' salaries to finance the System's unfunded liabilities and employee retirement plans, without providing such employees with just compensation for this divestiture.
- 155. Measure B seizes a greater portion of their salaries to finance the City's unfunded liabilities related to pension and retiree health benefits. In other words, because Measure B seizes wages in order to pay for the previously-incurred retiree health and Pension obligations associated with others, it constitutes an unconstitutional taking.
- 156. Although Measure B significantly infringes upon the vested property rights of plaintiff and those it represents, it does not provide them with any form of comparative advantage. Therefore, it amounts to an unconstitutional taking of private property for a public purpose without just compensation.

	165.	The California Constitution states that "the retirement board of a public pension or
retiren	nent sys	tem shall have plenary authority and fiduciary responsibility for investment of moneys
and ad	ministra	ation of the system" subject to specified conditions. (Cal. Const. art XVI § 17.)

- 166. It further provides that the Board "shall have the sole and exclusive fiduciary responsibility over the assets of the public pension or retirement system[,]" and "it shall also have the sole and exclusive responsibility to administer the [S]ystem in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries." Furthermore, the "assets of [the System] are trust funds and shall be held for the exclusive purposes of providing benefits to participants in the [System] and their beneficiaries and defraying reasonable expenses of administering the [S]ystem." (Cal. Const. art XVI § 17(a).)
- 167. A Retirement Board's "duty to its participants and their beneficiaries shall take precedence over any other duty." (Cal. Const. art XVI § 17(b).) Further, the Board's "exclusive fiduciary responsibilit[y] ... to provide for actuarial services in order to assure the competency of the assets of the" System. (Cal. Const. art XVI § 17(e). See also SJMC § 3.28.350(B).)
- 168. The City's Municipal Code grants real party in interest, the Retirement Board, exclusive control over investing and administering of the retirement fund. (SJMC § 3.28.310.)
- 169. The Code charges the Board with investing and reinvesting fund assets, which are "held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the plan." (SJMC § 3.28.350(A).)
- 170. Amongst its other responsibilities, the Board also determines employee eligibility for receipt of retirement benefits, the calculation of employer and member contributions, and the distribution of benefits to retirees.
- 171. The California Constitution also requires that the "members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable administrative expenses of administering the system." (Cal. Const. art. XVI § 17(a).) Also, a retirement board's

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 to their hours or terms of employment, their classification, years of service, hours or any other indicia of their employment.

- 189. The excise is a means of disbursing the cost of government, that is, the provision of essential government functions. The city has and does characterize its obligations to fund pension and retiree benefits as essential government functions, and has sought approval for various retiree health funding mechanisms from the IRS based on the premise that its retirement obligations were essential government functions.
- 190. The excise imposed on certain employees' wages is unrelated to employee eompensation, and is therefore in the nature and character of a tax.
- 191. A government such as the City may not withhold benefits on the condition that the prospective recipient surrender constitutional rights. Here in order to avoid the imposition of the wage excise, the City has required employees to surrender constitutionally-protected rights to their earned and promised pensions.
- 192. The city has singled-out a class or individuals for distinctive treatment on an impermissible and unconstitutional basis; namely, their refusal to relinquish certain pension rights.
- 193. Here the excise tax establishes at least four similarly-situated classes of subgroups, and singles out only one group for taxation: (1) City employees who do not relinquish their pension rights voluntarily; (2) City employees who do relinquish their pension rights; (3) new City employees and (4) employees employed by entities other than the City. Measure B imposes a tax only on the first group.
- 194. There is no rational basis to treating these groups differently where the city seeks to fund its general obligations necessary to essential government functions.
- 195. Because the excise is based on distinctions intertwined with constitutionally-protected rights, that is, the right to receive an earned and promised pension, the excise is subject to strict scrutiny review.
- 196. Further, the payments imposed by Measure B have a discriminatory effect based on wealth, namely, those City employee who are unable to shoulder the burden of a 16% excise have no choice but to forego their right to their eamed pension.

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- 197. The excise is a tax as that term is defined by Article 13(C) of the California constitution, namely, it is a "levy, charge or exaction of any kind imposed by a local government."
 - 198. The excise imposed by Measure B violated government code 17041.5.
- 199. Rather than impose upon employees the cost of their own, incurred benefits, Measure B imposes on employees an excise to raise funds for the payment and funding of general obligations of the City, namely the already-incurred liabilities of future retirees and the benefits provided to current retirees.
- 200. Thus, the manner in which the costs allocated by the excise to the payors do not bear a fair or reasonable relationship to the payers' burdens on, or benefits received from, the governmental activity.
- 201. Under California law, permissible fees must be related to the overall cost of the governmental regulation. A fee, excise or tax may not exceed the reasonable cost of regulation with the generated surplus used for general revenue collection. An excessive fee that is used to generate general revenue becomes a tax.
- 202. The excises imposed by Measure B are excessive as they are not related to the cost of the individual employees' benefits, are unrelated to their employment or service to the City, and are imposed in order to subsidize or fund the City's own, previously incurred, obligations.
- 203. The real object purpose and result of the payroll excise is to impose a wage tax for the purpose of funding the City's general obligations.
- 204. The excises further offend principles of equal protection under the California Constitution.
- 205. Statutes imposing fees, excises of taxes violate the California Constitution's equal protection clause if they select one particular class of persons for a species of taxation without rational basis.
- 206. Measure B violates the California Constitution's equal protection provision to the extent it imposes liability upon one person for the support of another not obligated to support such person. Thus, there is no rational basis for levying the excise exclusively upon members.

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207. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.

- 208. Promissory estoppel serves as consideration in order to enforce a bargained-for agreement. That is, the reliance on a promise made by one party serves as a basis to enforce such promise in law or equity.
- 209. Estoppel applies to claims against the government, particularly where the application of the doctrine would further public policies and prevent injustice.
- The City, through its Municipal Code, Charter and communications with employees 210. and their labor organizations represented that employees were not liable to finance public debt, or the System's or RHC Plan's unfunded liabilities.
- The City further represented that employees would earn benefits and have the right to 211. receive a certain level of benefits. In reliance thereon, such members and employees accepted and continued in employment, and made payroll contributions of their own into the System and RHC Plan.
- 212. The City should have reasonably expected these promises to encourage the miscellaneous employees to accept employment with it and continue working for it until they qualified for service retirement.
- The City violated these promises when it adopted Measure B by reducing benefits and shifted the burden of financing its unfunded liabilities upon miscellaneous employees.

NINTH CAUSE OF ACTION REQUEST FOR DECLARTORY RELIEF

(Code of Civ. Pro. § 1060)

- Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth 214. fully herein.
- Measure B requires that the City Council adopt ordinances to "implement and 215. effectuate [its] provisions...." Unless relief is granted, Measure B becomes effective immediately and sets as a goal that "such ordinances shall become effective no later than September 30, 2012."

Municipal Code, and agreements between the parties.

- 225. Plaintiff has no plain, speedy, or adequate remedy at law.
- 226. Plaintiff's members will suffer irreparable harm in the event the City is not enjoined from implementing Measure B.
- 227. The injunctive relief Plaintiff seeks is prohibitory in nature, and it seeks to restrain and/or prohibit Defendant City from taking any steps to implement, enforce, or otherwise give effect to Measure B.

ELEVENTH CAUSE OF ACTION PETITION FOR WRIT OF MANDATE

(Code of Civ. Pro. § 1085)

- 228. Plaintiff hereby incorporates by reference the preceding paragraphs as though set forth fully herein.
- 229. Respondent City, and those public officers and employees acting by and through its authority including Necessary Party in Interest have a clear, present, and ministerial duty to implement only those ordinances and regulations that are not in conflict with the California Constitution. Respondent City has failed to perform its duty to comply with those requirements to the extent it intends to implement the provisions of Measure B.
- 230. Measure B violates Const. art. I, sects. 1, 2, 7, 9, 19; Const. art. XVI, sect. 17 of the California Constitution; the City Charter; the SJMC; and the terms of the Plan.
- 231. Petitioner is beneficially interested in a peremptory writ of mandate to compel Respondent City, and those public officers and employees acting by and through its authority, to perform their duties imposed by law, including refraining from implementing the provisions of Measure B.
 - 232. Plaintiff has no plain, speedy or adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff-Petitioner prays for the following relief:

 A declaration that Measure B cannot be applied to the AFSCME members working for the City on or before June 5, 2012;

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I declare that I am employed in the County of Alameda, State of California. I am over the age of eighteen (18) years and not a party to the within cause. My business address is Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California, 94607-4051. On this day, 1 served the foregoing Document(s):

FIRST AMENDED COMPLAINT FOR DECLARATORY AND

INJUNCTIVE RELIEF AND PETITION FOR WRIT OF MANDAMUS
By Mail to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(a), by placing a true copy thereof enclosed in a sealed envelope in a designated area for outgoing mail, addressed as set forth below. 1 am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
By Personally Delivering a true copy thereof, to the parties in said action, as addressed below in accordance with Code of Civil Procedure §1011.
By Messenger Service to the parties in said action, as addressed below, in accordance with Code of Civil Procedure § 1011, by placing a true and correct copy thereof in an envelope or package addressed to the persons at the addresses listed below and providing them to a professional messenger service.
By UPS Overnight Delivery to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(c), by placing a true and correct copy thereof enclosed in a sealed envelope, with delivery fees prepaid or provided for, in a designated outgoing overnight mail. Mail placed in that designated area is picked up that same day, in the ordinary course of business for delivery the following day via United Parcel Service Overnight Delivery.
By Facsimile Transmission to the parties in said action, as addressed below, in accordance with Code of Civil Procedure §1013(e).
By Electronic Service. Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed below. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.
SEE ATTACHED SERVICE LIST
1 declare under penalty of perjury that the foregoing is true and correct. Executed in Oakland, California, on this date, February 11, 2013.
Tanya Gatt
·····································

PROOF OF SERVICE Case No. 112CV225926

1	SERVICE LIST		
	Greg McLean Adam, Esq. Jonathan Yank, Esq.	Arthur A. Hartinger, Esq. Jennifer L. Nock, Esq.	
1	Gonzalo C. Martinez, Esq. Amber L. West, Esq.	Linda M. Ross, Esq. Michael C. Hughes	
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	WYLIE, McBRIDE, PLATTEN & RENNER 2125 Canoas Garden Avenue, Suite 120	San Francisco, CA 94105	
	San Jose, CA 95125	Attorneys far Defendant, CITY OF SAN JOSE, BOARD OF ADMINISTRATION FOR POLICE	
Ì	Attorneys for Plaintiffs/Petitioners, ROBERT SAPIEN, MARY McCARTHY, THANH HO, RANDY SEKANY AND KEN HEREDIA (Santa	AND FIRE DEPARTMENT RETIREMENT PLAN OF CITY OF SAN JOSE (Santa Clara Superior Court Case No. 112CV225926)	
ı	Clara Superior Court Case No. 112-CV-225928) AND	AND	
l	AND Plaintiffs/Petitioners, JOHN MUKHAR, DALE	 Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1961 SAN JOSE	
	DAPP, JAMES ATKINS, WILLIAM BUFFINGTON AND KIRK PENNINGTON (Santa Clara Superior Court Case No. 112-CV-226574)	POLICE AND FIRE DEPARTMENT RETIREMENT PLAN (Santa Clara Superior Court Case No. 112CV225928)	
	AND	AND	
L	Plaintiffs/Petitioners, TERESA HARRIS, JON REGER, MOSES SERRANO (Santa Clara Superior Court Case No. 112-CV-226570)	Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE 1975 FEDERATED CITY EMPLOYEES'	
		RETIREMENT PLAN (Santa Clara Superior Court Case Nos. 112CV226570 and 112CV22574)	
		AND	
ı		Necessary Party in Interest, THE BOARD OF ADMINISTRATION FOR THE FEDERATED	

Stephen H. Silver, Esq. Richard A. Levine, Esq. Jacob A. Kalinski, Esq. SILVER, WEXLER & LEVINE 1428 Second Street, Suite 200 Santa Monica, CA 90401-2367 Attorneys for Plaintiffs, SAN JOSE RETIRED EMPLOYEES ASSOCIATION, HOWARD E. FLEMING, DONALD S. MACRAE, FRANCES J. OLSON, GARY J. RICHERT and ROSALINDA NAVARRO (Santa Clara Superior Court Case No. 112CV233660) PROOF OF SERVICE Case No. 112CV225926

EXHIBIT C

BLACK'S LAW DICTIONARY®

Definitions of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern

By

HENRY CAMPBELL BLACK, M. A.

ABRIDGED SIXTH EDITION BY THE PUBLISHER'S EDITORIAL STAFF

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ST. PAUL, MINN. WEST PUBLISHING CO. 1991

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onding

a, /Oéyta/

the price at which the product can be resold. See the price maintenance; Vertical price-fixing con-

To give an immediate, fixed right of present vest to present of present of future enjoyment. To accrue to; to be fixed; to take effect.

To clothe with possession; to deliver full possession of land or of an estate; to give seisin; to enfeoff. See also Vested.

vested. Fixed; accrued; settled; absolute; complete. Having the character or given the rights of absolute ownership; not contingent; not subject be defeated by a condition precedent. Rights are "vested" when right to enjoyment, present or prospective, has become property of some particuar person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute "vested right." See also Accrue; Vest, and specific types of vested interests, infra.

Vested devise. See Devise.

An interest clothed with a Vested estate. present, legal, and existing right of alienation. Asy estate, whether in possession or nat, which is not subject to any candition precedent and unperformed. The interest may be either a present and immediste interest, or it may be a futura but uncontingent, and therefore transmissible, interest. Estate by which present interest is invariably fixed to remain to determinate person on determination of preceding freehold estate. An estate, when the person ar the class which takes the remainder is in existence or is capable of being ascertained when the prior estate vests; or when there is an immediate right of present enjoyment or a present right of future enjoyment. Vested gift. A gift that is absolute and not con-

tingent or conditional. A gift is vested if it is immediate, notwithstanding that its enjayment may be postponed. A future gift when the right to receive it is not subject to a condition prece-

Vested in interest. A legal term applied to a present fixed right of future enjoyment; as reversions, vested remainders, such executory devises, future uses, conditional limitations, and other future interests as are not referred to, or made to depend an, a period or event that is uncertain.

Vested in possession. A legal term applied to a right of present enjoyment actually existing. See

Vested Interest, A present right or title to a thing, which carries with it an existing right of lighation, even though the right to possession or enjoyment may be postponed to some uncertain time in the future, as distinguished from a future fight, which may never materialize or ripen into title, and it matters not how long or for what length of time the future passession or right of enjoyment may be postponed, if the present right exists to alienate and pass title. A future interest not dependent on an uncertain period or event, or a fixed present right of future enjayment. When a person has a right to immediate possession on determination of preceding or particular estate. One in which there is a present fixed right, either of present enjoyment or of future enjoyment.

Vested legacy. A legacy given in such terms that there is a fixed, indefeasible right to its payment. A legacy payable at a future time, certain to arrive, and not subject to conditions precedent, is vested, where there is a person in esse at the testator's death capable of taking when the time arrives, thaugh his interest may be altogether defeated by his own death. A legacy is said to be vested when the words of the testator making the bequest convey a transmissible interest, whether present ar future, to the legatee in the legacy. Thus a legacy to one to be paid when he attains the ags of twenty-one years is a vasted legacy, because it is given unconditionally and absolutely, and therefore vests an immediate interest in the legatee, of which the enjoyment only is deferred or postponed.

Vested pension. Said of a pension plan when an employee (or his or her estate) has rights to all the bansfits purchased with the employer's contributions to the plan even if the emplayee is not emplayed by this employer at the time of retirement. One in which the right to be paid is not subject to forfeiture if the employment relationship terminates before the employee retires. Vesting of qualified pension plans is governed by the Employees Retirement Income Security Act (ERISA). See also Vesting.

Vested remainder. See Remainder.

Vested rights. In constitutional law, rights which have so completely and definitely accrued to or settled in a person that they are not subject to be defaated or canceled by the act of any other private person, and which it is right and equitable that the government should recognize and protect, as being lawful in themselves, and settled according to the then current rules of law, and of which the individual could not be deprived arbitrarily without injustice, or of which he could not justly be deprived otherwiss than by the established methods of procedure and for the public welfare. Such interests as cannot be interfered with by retrospective laws; interests which it is proper for state to recognize end protect and of which individual cannot be deprived arbitrarily without injustice.

Vesting. Right that employes acquires to various employer-contributed benefits (e.g., pension) after having been employed for requisite number of

EXHIBIT D

grant transitive verb \'grant\

Definition of GRANT

Like

b: to permit as a right, privilege, or favor < luggage allowances *granted* to passengers>

- 2 : to bestow or transfer formally < grant a scholarship to a student>; specifically : to give the possession or title of by a deed
- 3 a: to be willing to concede

b: to assume to be true < granting that you are correct>

- grant-able adjective

--- grant-er noun

— grant·or noun

Examples of GRANT

The mayor refused to grant my request for an interview.

The court granted the motion for a new trial.

I cannot grant you that wish.

We haven't yet been granted access to the archive.

The country was granted independence in 1950.

The judge granted custody of the children to their mother.

I grant that he's a talented writer, but I just don't find his books very interesting.

The house is not perfect, I grant you that.

Origin of GRANT

Middle English, from Anglo-French granter, graanter, from Vulgar Latin *credentare, from Latin credent-, credens, present participle of credere to believe — more at CREED

First Known Use: 13th century

Related to GRANT

Synonyms

acknowledge, agree, allow, concede, confess, fess (up), admit, own (up to)

Antonyms

denv

Related Words

disburden, unburden, unload; affirm, avow, confirm, profess; accept, recognize, yield; announce, break, broadcast, communicate, declare, disclose, divulge, impart, proclaim, publish, reveal, spill, tell, unveil; betray, blab, expose, give away, inform, leak, rat, squeal, talk, tattle, tip (off), warn, wise (up); breathe, say, whisper

Near Antonyms

disallow, disavow, disclaim, disown; contradict, dispute, gainsay, negate, negative; rebut, refute, reject, repudiate; conceal, cover (up), hide, obscure, veil; kid (oneself)

more

Synonym Discussion of GRANT

GRANT, CONCEDE, VOUCHSAFE, ACCORD, AWARD mean to give as a favor or a right. GRANT implies giving to a claimant or petitioner something that could be withheld *<granted* them a new hearing>. CONCEDE implies yielding something reluctantly in response to a rightful or compelling claim *<even her critics concede* she can be charming>. VOUCHSAFE implies granting something as a courtesy or an act of gracious condescension *<vouchsafed* the secret to only a few chosen disciples>. ACCORD implies giving to another what is due or proper *<accorded* all the honors befitting a head of state>. AWARD implies giving what is deserved or merited usually after a careful weighing of pertinent factors *<awarded* the company a huge defense contract>.

Rhymes with GRANT

ant, aunt, brant, cant, chant, Kant, pant, plant, rant, scant, slant

²grant noun

Definition of GRANT

- 1 : the act of granting
- 2 : something granted; especially: a gift (as of land or money) for a particular purpose
- 3 a: a transfer of property by deed or writing
 - **b**: the instrument by which such a transfer is made; also: the property so transferred

4 : a minor territorial division of Maine, New Hampshire, or Vermont originally granted by the state to an individual or Institution

☑ See grant defined for English-language learners »

Examples of GRANT

Her study is being funded by a federal grant.

They wrote a grant proposal to get funding for the project.

First Known Use of GRANT

13th century

Related to GRANT

Synonyms

allocation, allotment, annuity, entitlement, appropriation, subsidy, subvention

Related Words

aid, assistance, block grant, grant-in-aid, set-aside; foreign aid, relief, state aid; advance, allowance, benefit, bequest, endowment, fund, legacy, stipend, trust, trust fund

more

Other Economics Terms

actuary, compound interest, globalization, indemnity, portfolio, rentier, stagflation, usurer

EXHIBIT E

amend verb \a-'mend\

Definition of AMEND

Like

transitive verb

- 1 : to put right; especially : to make emendations in (as a text)
- 2 a: to change or modify for the better: IMPROVE <amend the situation>

b: to alter especially in phraseology; especially: to alter formally by modification, deletion, or addition <amend a constitution>

intransitive verb

- : to reform oneself
- amend-able

adjective

- amend-er noun

See amend defined for English-language learners »
See amend defined for kids »

Examples of AMEND

The country's constitution was amended to allow women to vote.

They voted to amend the law in 1920.

He tried to amend the situation by apologizing to me.

Origin of AMEND

Middle English, from Anglo-French amender, modification of Latin emendare, from e, ex out + menda fault; akin to Latin mendax lying, mendicus beggar, and perhaps to Sanskrit mindā physical defect

First Known Use: 13th century

Related to AMEND

Synonyms

ameliorate, improve, better, enhance, enrich, help, meliorate, perfect, refine, upgrade

Antonyms

worsen

Related Words

correct, emend, rectify, reform, remediate, remedy; edit, fine-tune, redraft, refurbish, rehab, rehabilitate, revamp, revise, rework; beef (up), boost, fortify, intensify, reinforce (also reenforce), strengthen; fine, hone, polish; retouch, touch up

Near Antonyms

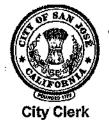
damage, endamage, harm, hurt, impair, injure, spoil, tarnish, vitiate; blemish, blight, deface, disfigure, flaw, mar; diminish, lessen, lower, reduce

more

See Synonym Discussion at correct

EXHIBIT F

CITY OF SAN JOSÉ, CALIFORNIA



Office of the City Clerk 200 East Santa Clara Street San José, California 95113 Telephone (408) 535-1260 FAX (408) 292-6207

STATE OF CALIFORNIA) COUNTY OF SANTA CLARA) CITY OF SAN JOSE)

I, Lee Price, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "Ordinance No. 28752", the original copy of which is attached hereto, was passed for publication of title on the 15th day of June, 2010, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the 22nd day of June, 2010, by the following vote:

AYES:

CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA, KALRA,

LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES:

NONE.

ABSENT:

NONE.

DISQUALIFIED:

NONE.

VACANT:

NONE.

Said ordinance is effective as of 23rd day of July, 2010.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this 28th day of June, 2010.

(SEAL)

LEE PRICE, MMC CITY CLERK & EX-OFFICIO CLERK OF THE CITY COUNCIL

/rmk

ORDINANCE NO. 28752

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING CHAPTERS 3.28 AND 3.44 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO ADD NEW SECTIONS 3.28.755, 3.28.955 AND 3.44.105 AND AMEND SECTIONS 3.28.770 AND 3.28.780 TO IMPLEMENT REVISIONS IN EMPLOYEE AND EMPLOYER RETIREMENT CONTRIBUTIONS FOR THE FEDERATED CITY EMPLOYEES RETIREMENT SYSTEM

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF SAN JOSE:

SECTION 1. Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is hereby amended by adding a new section to be numbered, entitled and to read as follows:

3.28.755 Additional Employee Contributions

Notwithstanding any other provisions of this Part 6 or of Chapter 3.44, members of this system shall make such additional retirement contributions as may be required by resolution adopted by the City Council or by executed agreement with a recognized bargaining unit.

SECTION 2. Section 3.28.770 of Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is hereby amended to read as follows:

3.28.770 Contributions - Individual Account Requirements

A. Each member's normal contributions, including those made under the Chapter 3.24 system and those made under this system, shall be credited by the Director of Finance to an individual account kept for such member. Such account shall also show any and all withdrawals or redeposits of normal contributions, if any, made by the member pursuant to the provisions of the Chapter 3.24 retirement

system or this system. The total normal contribution so credited to a member, plus interest, if any, on such contributions which has been credited to such account, less all such contributions which have been withdrawn and not redeposited, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated normal contributions of such member in this system.

- B. Each member's prior service contributions, made on or after July 1, 1975 under the provisions of this system, also shall be credited by the Director of Finance to an individual account kept for such member. Such account shall also show all withdrawals of prior service contributions, if any, made by such member pursuant to the provisions of this system. The total prior service contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated prior service contributions of such member in this system.
- C. Each member's additional contributions made on or after July 1, 2010 under the provisions of this system, also shall be credited by the Director of Finance to an individual account kept for such member. Such account shall also show all withdrawals of additional contributions, if any, made by such member pursuant to the provisions of this system. The total additional contributions thus credited to a member, plus interest if any on such contributions which has been credited to such account, less withdrawals, shall be deemed, unless and except as may be otherwise provided by other provisions of this system, to be the accumulated additional contributions of such member in this system.
- D. Payment of salaries and wages, less contributions required of a member, is in full discharge of all claims and demands whatsoever for the services rendered by

the members during the periods covered by such payment, except the benefits afforded by the provisions of this Chapter.

SECTION 3. Section 3.28.780 of Part 6 of Chapter 3.28 of Title 3 of the San José Municipal Code is hereby amended to read as follows:

3.28.780 Return of Contributions

- A. Except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420 of this Chapter, if the membership herein of a member of this system is terminated for any reason other than death or retirement, the member shall be paid, within six (6) months after the date of such termination, all of his or her accumulated normal contributions, all of his or her accumulated prior service contributions and all of his or her accumulated additional contributions.
- B. Anything elsewhere in this Chapter 3.28 to the contrary notwithstanding, if during a member's employment with the City, the member is required to or elects to become a member of any other retirement system supported in whole or in part by public funds, or is required to or elects to discontinue such federated City service as qualifies him or her for membership in this system and thereafter renders City service other than federated City service, such member shall be considered as having resigned from federated City service and, except as otherwise provided in Sections 3.28.580, 3.28.590, 3.28.785, and 3.28.2420, to have terminated membership in this system, as of the date he or she becomes a member of said other system or ceases to render said federated City service as aforesaid.
- C. Except as provided in Section 3.28.785, upon termination of a member's membership in this system for any reason other than death or retirement, the member, and any and all other persons or estates who might otherwise be

entitled to any rights or benefits under this system because of such member's membership, shall thereupon cease to have or be entitled to any rights or benefits under this system.

SECTION 4. Part 7 of Chapter 3.28 of Title 3 of the San José Municipal Code is hereby amended by adding a new section to be numbered, entitled and to read as follows:

3.28.955 Offset to City for Additional Employee Contributions

Notwithstanding any other provision of this Part 7, the City shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the Federated City Employees Retirement System, of the additional employee retirement contributions that are made under Section 3.28.755 against the retirement contributions that the City would otherwise be required to make under this Part 7.

SECTION 5. Chapter 3.44 of Title 3 of the San José Municipal Code is hereby amended by adding a new section to be numbered, entitled and to read as follows:

3.44.105 Additional Employee Contributions

Notwithstanding any other provisions of this Chapter 3.44, the City shall be entitled to an offset of a percentage, as is determined appropriate by the actuary for the Federated City Employees Retirement System, of the additional employee retirement contributions that are made under Section 3.28.755 against the COLA fund contributions that the City would otherwise be required to make under this Chapter 3.44.

RD:MD1 6/23/10

PASSED FOR PUBLICATION of title this 15th day of June, 2010, by the following vote:

AYES:

CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,

KALRA, LICCARDO, NGUYEN, OLIVERIO, PYLE; REED.

NOES:

NONE.

ABSENT:

NONE.

DISQUALIFIED:

NONE.

Mucha Kee

CHUCK REED Mayor

LEE PRICE, MMC City Clerk

SAN JOSE POST-RECORD

95 S. Market St., Ste. 535, SAN JOSE, CA 95113 Telephone (408) 287-4886 / Fax (408) 287-2544

SUZANNE GUZZETTA SAN JOSE CITY CLERK 200 E. SANTA CLARA ST. SAN JOSE, CA - 95113

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California County of SANTA CLARA

)) 55

Notice Type:

GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description: ORDINANCE #28752

RECEIVED his spece for filling stamp only San Jose City Clerk

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SJ#: 1886526

8881NANCE NO. 28752

AN ORDINANCE OF THE CITY OF SAN JOSE AMENOING CHAPTERS 3.28 AND 2.44 OF TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO ADD NEW SECTIONS 3.28.765. 3.28.966 AND 3.44.105 AND AMENA SECTIONS 3.28.776 AND 3.28.790 TO IMPLEMENT REVISIONS IN EMPLOYEE AND MELIOUS AND AMENA SECTIONS OF MELIOUS AND ASSET OF PUBLICATION of the that is day of June, 2810, by the following vole: AYES: CAMPOS, CHIRCO, CNILL GONSTANT, HERRERA KAIRA, LIGCARDO, NGUYEN, OLIVERIO, FYLE, REFORMANT, HERRERA KAIRA, LIGCARDO, NGUYEN, OLIVERIO, FYLE, REGO NOSE; NOME, AGSENT, NONE, ONSCIULTERS; NONE.

CHUCK REER Mayor ATTEST: LEE PRICE, MMC City Clerk 6/18/10

SJ-1886528#

i em e citizen af the United States and a resident of the State of Californie; i am aver the ege of alghteen yeers, and not a party to or interested in the above entitled metter. I em the principal cierk of the printer and publisher or the SAN JOSE POST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged a newspaper ef general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, under date 02/03/1922, Casa No. 27844. That the nettice, of which the annexed is a printed copy, has been published in each regular and antire lasue of said nawspaper and not in any supplament thereof on the fellawing dates, to-wit:

06/18/2010

Executed on: 06/18/2010 At Los Angeles, California

is certify (or declare) under penalty of perjuly that the toregoing is true and

Signature

* A O O O O O O T 7 3 1 6 4 8 *

EXHIBIT G

CITY OF SAN JOSÉ, CALIFORNIA



Office of the City Clerk 200 East Santa Clara Street San José, Callfornia 95113 Telephone (408) 535-1260 FAX (408) 292-6207

STATE OF CALIFORNIA) COUNTY OF SANTA CLARA) CITY OF SAN JOSE)

I, Dennis Hawkins, City Clerk & Ex-Officio Clerk of the Council of and for the City of San Jose, in said County of Santa Clara, and State of California, do hereby certify that "Ordinance No. 28914", the original copy of which is attached hereto, was passed for publication of title on the 17th day of May, 2011, was published in accordance with the provisions of the Charter of the City of San Jose, and was given final reading and adopted on the 24th day of May, 2011, by the following vote:

AYES:

CAMPOS, CHU, CONSTANT, HERRERA, KALRA, LICCARDO,

NGUYEN, OLIVERIO, PYLE, ROCHA; REED.

NOES:

NONE.

ABSENT:

NONE.

DISQUALIFIED:

NONE.

VACANT:

NONE.

Said ordinance is effective as of 24th day of June, 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the corporate seal of the City of San Jose, this 27th day of May, 2011.

(SEAL)

CITY CLERK & EX-OFFICIO CLERK OF THE CITY COUNCIL

ORDINANCE NO. 28914

AN ORDINANCE OF THE CITY OF SAN JOSE AMENDING TITLE 3 OF THE SAN JOSE MUNICIPAL CODE TO ADD A NEW CHAPTER 3.52, AND TO AMEND SECTIONS 3.28.380, 3.28.1980, 3.28.1995, 3.28.2030 AND 3.28.2045 AND ADD A NEW SECTION 3.28.385 OF CHAPTER 3.28 OF TITLE 3 FOR THE PURPOSE OF ESTABLISHING A NEW TRUST PURSUANT TO SECTION 115 OF THE INTERNAL REVENUE CODE RELATED TO RETIREE HEALTHCARE BENEFIT FUNDING AND PAYMENT OF RETIREE HEALTH CARE BENEFITS

WHEREAS, pursuant to Governmental Accounting Standards Board Statements No. 43 ("GASB 43") and No. 45 ("GASB 45"), a non-federal governmental plan and employer must take steps to define and disclose the post-employment benefits, other than pension benefits, provided for retirees and their eligible spouses, registered domestic partners, and dependents entitled to health coverage, and to actuarially determine its liability for such benefits; and

WHEREAS, a non-federal governmental plan or employer may reduce or eliminate its net OPEB obligation, as defined in GASB 43 and GASB 45, by making contributions to an irrevocable trust in relation to such anticipated benefits; and

WHEREAS, the City of San José ("City") maintains health plans in which retired members of the Federated City Employees Retirement Plan may participate in order to obtain medical and dental care pursuant to Parts 16 and 17 of Chapter 3.28 of the San José Municipal Code; and

WHEREAS, as of July 1, 1995, there was established a medical benefits account, pursuant to internal Revenue Code Section 401(h) within the Federated City Employees Retirement Plan for the purpose of providing for the payment of benefits for sickness, accident, hospitalization, dental or medical expense of persons receiving

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monthly allowances under the provisions of the Federated City Employees Retirement

Pian; and

WHEREAS, Internal Revenue Code Section 401(h) limits the aggregate of the

contributions to the medical benefits account; and

WHEREAS, the City has been advised by the actuary for the Federated City Employees

Retirement Plan that the ramp up to full funding as contemplated by the agreement with

the bargaining units will cause contributions to the medical benefits account to exceed

the Internal Revenue Code Section 401(h) limit in calendar year 2011 or 2012; and

WHEREAS, in order to reduce or eliminate its net OPEB obligation, as defined in GASB

43 or GASB 45, the City has approved agreements with the bargaining units

representing employees in the Federated City Employees Retirement Plan that provide

for the establishment of a new trust pursuant to Section 15 of the Internal Revenue

Code related to retiree healthcare benefit funding and payment of retiree health care

benefits;

NOW THEREFORE BE IT ORDAINED BY THE COUNCIL OF THE CITY OF

SAN JOSE:

SECTION 1. Section 3.28.380 of Part 3 of Chapter 3.28 of Title 3 of the San José

Municipal Code is amended to read as follows:

3.28.380 Separate Medical Benefits Account

A. There is hereby established as of July 1, 1995, the medical benefits account as a

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separate account within the retirement fund. The medical benefits account shall

be maintained in compliance with Internal Revenue Code Section 401(h) and the

regulations promulgated thereunder. Monies in the medical benefits account

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may be commingled with other monies in the retirement fund solely for the purposes of investment.

- B. All contributions made to the retirement fund to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this Plan, and all earnings and interest attributable to such contributions to the retirement fund, shall be placed in the medical benefits account. All contributions to the medical benefits account shall be reasonable and ascertainable. At the time the City makes a contribution to the medical benefits account, the City shall designate in writing that such contribution is solely for the medical benefits account.
- C. Contributions to provide for the payment of benefits for sickness, accident, hospitalization, dental or medical expenses of persons receiving monthly allowances under the provisions of this Plan, and earnings and interest attributable to such contributions may be made to the medical benefits account or to the Trust established by Chapter 3.52.
- D. All funds in the medical benefits account shall be used only for the payment of benefits and expenses allowed under Internal Revenue Code Section 401(h) and the regulations promulgated thereunder. The medical benefits account shall be used to provide medical and dental benefits in accordance with Parts 16 and 17 of this Chapter. Prior to the satisfaction of all liabilities under this Plan to provide such benefits, no funds in the medical benefits account shall be used for, or diverted to, any other purpose.
- E. All benefits provided through the medical benefits account, plus any life insurance protection provided under the Plan, shall be subordinate to the retirement and survivors' benefits provided by the Plan. Accordingly, at all times after the date on which the medical benefits account is established, the

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aggregate of the City's contributions to the medical benefits account shall not

exceed twenty-five percent (25%) of its total aggregate contributions to the Plan

(other than contributions to fund prior service). For the purpose of this limitation,

City contributions include any contributions which are "picked-up" pursuant to

Internal Revenue Code Section 414(h).

F. Upon the satisfaction of all liabilities under this Plan to provide the benefits

described in this Section, any amount remaining in the medical benefits account

shall be paid to the City.

G. In the event that a member's interest in the medical benefits account is forfeited

prior to the termination of the Plan, an amount equal to the forfeiture shall be

applied as soon as practicable to reduce the City contributions, if any, to the

medical benefits account.

H. City and member contributions to the medical benefits account shall be made on

the same periodic basis as City and member contributions are made to the

retirement fund. City contributions and member contributions to the medical

benefits account may be paid on different payment schedules.

SECTION 2. Part 3 of Chapter 3.28 of Title 3 of the San José Municipal Code is

amended to add new section 3.28.385 to be numbered, entitled and read as follows:

3.28.385 Contribution Rates for Medical and Dental Benefits

Contribution rates to fund the benefits for sickness, accident, hospitalization, dental or

medical expenses shall be established by the Board as determined by the Board's

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actuary and shall be borne by the City and the members of the Plan as follows:

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A. Contributions for dental benefits shall be made by the City and the members in

the ratio of eight (8)-to-three (3).

B. Contributions for medical and dental insurance premiums costs attributable to

the early retirement incentive programs described in Parts 18, 19, and 20 of this

Chapter shall be borne by the City.

C. Contributions for other medical benefits shall be made by the City and the

members in the ratio of one (1)-to-one (1).

SECTION 3. Section 3.28.1980 of Part 16 of Chapter 3.28 of Title 3 of the San José

Municipal Code is amended to read as follows:

3.28.1980 Allocation of Costs of Providing Medical Insurance Coverage to

Members or Survivors

A. The costs of premiums for medical insurance coverage in an eligible medical

plan shall be paid from the medical benefits account established by Section

3.28.380 or from the Trust Fund established by Chapter 3,52 and by deductions

from monthly allowances paid by the Plan in accordance with this Section

3.28.1980. Unless otherwise determined by the Trustees, payment shall be

made out of the medical benefits account until the account is exhausted and

thereafter out of the Trust Fund established by Chapter 3.52.

B. Except as provided in Subsection C:

1. The portion of the premium to be paid from the medical benefits account,

or Trust Fund established by Chapter 3.52, shall be the portion that

represents an amount equivalent to the lowest of the premiums for single

or family medical insurance coverage, for which the member or survivor is

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eligible and in which the member or survivor enrolls under the provisions of this Part, which is available to an employee of the City at such time as said premium is due and owing.

- 2. Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid from the medical benefits account. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this Chapter.
- C. A surviving spouse or surviving domestic partner who is otherwise eligible only for single coverage, but who elects family coverage pursuant to Section 3.28.1970.D.2, shall be required to pay that portion of the medical premium which exceeds the sum of the amount payable by the surviving spouse or surviving domestic partner and the amount payable from the medical benefits account or the Trust Fund established by Chapter 3.52 for single coverage as provided in Subsection B, above. The portion of the premium required to be paid by the surviving spouse or surviving domestic partner shall be deducted from the monthly allowances otherwise payable to the surviving spouse or surviving domestic partner.

<u>SECTION 4</u>. Section 3.28.1995 of Part 16 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.1995 <u>Limitation on Funding Provided To Retirement Fund for Medical</u> Benefits

A. It is intended that the funding provided to the retirement fund for medical benefits provided by this system meet the requirements of Internal Revenue Code

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Section 401(h). Subject to the requirements of the Meyers-Milias-Brown Act (California Government Code Section 3500 et seq.), the City reserves the right to amend this Part to limit the funding provided to the retirement fund for the medical benefits as necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to be paid into the retirement fund to fund the benefits provided by this Part 16 and the dental benefits provided by Part 17, as determined by the Board's actuary, would exceed the contribution limit permitted by Internal Revenue Code Section 401(h) and the applicable regulations, the allocation of costs set forth in Section 3.28.1980 shall be adjusted as needed so that the contributions made to fund the portion paid from the medical benefits account comply with Section 401(h). The Board, in consultation with its actuary, shall determine the adjustment to be implemented until this part is amended pursuant to Subsection A. above.

<u>SECTION 5.</u> Section 3.28.2030 of Part 17 of Chapter 3.28 of Title 3 of the San José Municipal Code is amended to read as follows:

3.28.2030 Costs of Dental Insurance

The cost of providing dental insurance coverage as provided in this Part shall be borne by and paid from the medical benefits account established by Section 3.28.380 or from the Trust Fund established by Chapter 3.52. Unless otherwise determined by the Trustees, payment shall be made out of the medical benefits account until the account is exhausted and thereafter out of the Trust fund established by Chapter 3.52.

SECTION 6. Section 3.28.2045 of Part 17 of Chapter 3.28 of Title 3 of the San José

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Municipal Code is amended to read as follows:

3.28.2045 <u>Limitation on Funding for Dental Benefits</u>

A. It is intended that the funding provided to the retirement fund for dental benefits

provided by this system meet the requirements of Internal Revenue Code

Section 401(h). Subject to the requirements of the Meyers-Milias-Brown Act

(California Government Code Section 3500 et seq.), the City reserves the right to

amend this Part to allocate costs of providing dental medical benefits as

necessary to satisfy the requirements of said Section 401(h).

B. In the event the contributions required to be paid into the retirement fund to fund

the benefits provided by this Part 17 and the medical benefits provided by Part

16, as determined by the Board's actuary, would exceed the contribution limit

permitted by Internal Revenue Code Section 401(h) and the applicable

regulations, then Section 3.28.2030 notwithstanding, all or a portion of the costs

set forth in Section 3.28.2030 may be allocated to the retiree, former member or

survivor covered by the dental plan as needed so that the contributions made to

fund the portion paid from the medical benefits account comply with Section

401(h). The Board, in consultation with its actuary, shall determine the allocation

to be implemented until this system is amended pursuant to Subsection A.

above.

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<u>SECTION 7</u>. Title 3 of the San José Municipal Code is amended to add a new Chapter to be entitled, numbered and read as follows:

CHAPTER 3.52 FEDERATED RETIREE HEALTH CARE TRUST FUND

Part 1

Definitions

3.52.010 Definitions - Rules of Construction

Unless the context otherwise requires, the definitions and general provisions set forth in this Part 1 govern the construction of Chapter 3.52.

3.52.020.01 "Administrator"

"Administrator" means the Director of the Retirement Services Department of the City of San José.

3.52.020.02 "Custodian"

"Custodian" means a bank, mutual fund, savings and loan association, insurance company or other qualified entity selected by the Trustees, to hold and administer the assets of the Trust Fund.

3.52.020.03 "Dependent"

"Dependent" means a surviving spouse, surviving domestic partner, or surviving child, who is entitled to medical benefits under Section 3.28.1960 and/or dental benefits

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under Section 3.28.2010.

3.52.020.04 "Governmental Accounting Standards Board" or "GASB"

"Government Accounting Standards Board" or "GASB" means the organization funded

and monitored by the Financial Accounting Foundation (FAF), or successor

organization, whose main purpose is to improve and create accounting reporting

standards or generally accepted accounting principles (GAAP), which make it easier for

users to understand and use the financial records of both state and local governments.

3.52.020.05 "GASB 43"

"GASB 43" means the estimates of total liability and annual employer required

contribution for post retirement health benefits that are required to be provided in the

Plan's annual financial reports pursuant to Governmental Accounting Standard Board

Statement No. 43, as said Statement is in effect on July 1, 2011.

3.52.020.06 "GASB 45"

"GASB 45" means the estimates of total liability and annual employer required

contribution for post retirement health benefits that are required to be provided in the

City's annual financial reports pursuant to Governmental Accounting Standard Board

Statement No. 45, as said Statement is in effect on July 1, 2011.

3.52.020.07 "Health and Welfare Benefit"

"Health and Welfare Benefit" means a medical, prescription drug, or dental benefit,

including a premium subsidy for the same, which is considered a post-retirement

benefit other than pension under GASB 43 and/or GASB 45. Such a benefit is limited

to medical care expenses, including premium subsidies as defined by IRC Section

213(d), which have been approved by the City Council.

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3.52.020.08 "Investment Fund"

"Investment Fund" means an investment fund that forms part of the Trust Fund as

established by the Trustees.

3.52.020.09 "Investment Manager"

"Investment Manager" means an investment manager selected by the Trustees or a

delegatee of the Trustees as authorized by .Section 3.52.420.

3.52.020.10 <u>"IRC"</u>

"IRC" means the Internal Revenue Code of 1986, as amended.

3.52.020.11 "OPEB Obligation"

"OPEB Obligation" means the obligation for post-employment benefits other than

pension benefits as defined under GASB 43 and/or GASB 45.

3.52.020.12 "Plan"

"Plan" means the health plan or plans in which Retirees and Dependents may

participate in order to obtain Health and Welfare Benefits pursuant to Parts 16 and 17

of Chapter 3,28.

3.52.020.13 "Property"

"Property" refers to any property, real or personal, or partial interests therein, wherever

situated, including, but not limited to, preferred and common stocks, shares of

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investment companies, bonds, notes, debentures and mortgages, equipment trust

certificates, investment trust certificates, interests in limited liability companies, in

partnerships whether limited or general or in any insurance contract, policy, annuity, or

other investment media offered by an insurance company, in which trust assets may be

invested pursuant to applicable law.

3.52.020.14 "Regulation"

"Regulation" means a policy, procedure, rule or regulation adopted by the Trustees,

establishing administrative procedures for the administration of the Trust.

3.52.020.15 "Retiree"

"Retiree" means a former employee of the City who is retired and is entitled to Health

and Welfare Benefits under the Plan as described in Parts 16 and 17 of Chapter 3.28.

3.52.020.16 "Trust"

"Trust" means the trust created and established by this Chapter.

3.52.020.17 "Trust Fund"

"Trust Fund" means all such money, Property, and all investments made therewith and

proceeds thereof and all earnings and profits thereon, less payments made by the

Trustees as authorized in this Chapter, which Trust Fund shall be known as the

Federated City Employees Health Care Trust Fund.

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3.52.020.18 "Trust Year"

"Trust Year" means the twelve (12) month period beginning each July 1 and ending the

following June 30 on which the books and records of the Trust are maintained.

3.52.020.19 "Trustees"

"Trustees" means the board of trustees as set forth in Section 3.52.400.

3.52.020.20 Rules of Construction

Words used herein in the masculine gender shall be construed to include the feminine gender where appropriate, and words used herein in the singular or plural shall be construed as being in the plural or singular where appropriate. Accounting terms and principles used herein or applicable hereto shall be as defined and described from time to time by pronouncements and other guidance of the Governmental Accounting

Standards Board ("GASB"), or any successor organization.

Part 2

Trust Establishment and Purpose

3.52.100 <u>Trust Established - Name - Purpose</u>

Α. There is hereby established an irrevocable trust, which shall be known as the

Federated City Employees Health Care Trust, to:

1. Receive contributions made by the City on or after July 1, 2011, for the

purpose of providing a funding source for the payment of medical benefits

described in Part 16 of Chapter 3.28, the dental benefits described Part

17 of Chapter 3.28 of this Title.

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- Upon receipt of a private letter ruling by the Internal Revenue Service concerning the exclusion from gross income of employee contributions to the Plan, as described in Section 3.52.130, to receive contributions made by employees for the purpose of providing a funding source for the payment of medical benefits described in Part 16 of Chapter 3.28, the dental benefits described Part 17 of Chapter 3.28 of this Title and any other Health and Welfare Benefits and any other post-employment benefits other than pensions as approved by City.
- Make distributions from the Trust Fund for the Health and Welfare Benefits provided for in the Plan and for the reasonable expenses of administering the trust and the Plan.
- B. Participation in, and any coverage under, the Trust shall not constitute nor be construed as a commitment to provide a specific type or level of benefit; nor shall the Trust constitute a specific, accrued or vested benefit for any specific employee, Retiree, or Dependent.
- C. The City intends that the income accruing to the Trust shall be excluded from City income for tax purposes, as such trust income is derived from the exercise of an essential governmental function as provided for under Section 115(1) of the IRC, Revenue Rulings 77-261 and 90-74, and other relevant guidance.

3.52.110 Trust Fund

The Trustees shall have exclusive authority and control over the administration and management of the Trust Fund, the investment of trust assets, and disbursements from the Trust Fund, pursuant to the provisions of this Chapter. The Trustees shall receive and accept for the purposes hereof all contributions described herein and shall hold, invest, reinvest, manage, administer, and distribute Property and the increments,

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proceeds, earnings, and income solely to meet OPEB Obligations and to fund Health and Welfare Benefits under the Plan as described herein.

3.52.120 Exclusive Benefit

- A. This Trust is created for the sole and exclusive purpose of funding Health and Welfare Benefits for Retirees and Dependents under the Plan. No portion of the principal or income of this Trust shall revert to the City except in a manner consistent with the irrevocability of contributions under the IRC and GASB 43 and/or GASB 45, or shall be used for or diverted to any purpose other than meeting the City's obligations to provide the Health and Welfare Benefits described in Parts 16 and 17 of Chapter 3.28 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust. Trust assets shall not be used to satisfy the claims of any creditor of the City or the Trustees.
- B. At no time shall any part of the Trust Fund be used for, or diverted to, purposes other than for the exclusive purpose of funding Health and Welfare Benefits for Retirees and their eligible Dependents, as applicable, as provided herein and under the Plan and for defraying the reasonable expenses of administering the Trust and the Plan. No part of the Trust's net earnings may inure to the benefit of a private person. Private parties do not participate in, or benefit from, the operation of the Trust.
- C. All investments, receipts, disbursements, and other transactions thereunder may be maintained in a common account, which contributions shall be used solely for the payment of benefits, expenses and other charges properly allocable to the Trust.

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3.52.130 Taxation

The Trust provides no guaranty that payments or reimbursements to employees, former

employees, retirees, or Dependents will be tax-free. The Trustees may obtain a ruling

from the Internal Revenue Service concerning the federal tax treatment of the Trust's

income. The ruling concerning federal tax treatment of the Trust's income may not be

cited or relied upon by the City whatsoever as precedent concerning any other matter

relating to the City's health plan(s) (including post-retirement health plans).

Trustees and the City may also obtain a ruling from the Internal Revenue Service

concerning whether contributions to the City's health plan(s) and/or payments from the

City's health plan(s) (including reimbursements of medical expenses) are excludable

from the gross income of employees, former employees or retirees, under the IRC.

3.52.140 Group Trust

The Trust Fund may participate under Section 401(a)(24) of the IRC in a qualified group

trust that meets the requirements of Section 401(a) of the IRC in accordance with

Revenue Ruling 81-100, as amended by Revenue Rulings 2004-67 and 2011-1, or

other relevant guidance.

Part 3

Deposits and Disbursements from the Trust Fund

3.52.200 Trust Deposits

A. The Trustees hereby delegate to the Administrator the responsibility for

accepting contributions to the Trust, remitting said contributions to the Custodian,

and paying benefits as described herein from the Trust Fund. The Administrator

is also responsible for crediting the deposits to the appropriate sub-trust, if sub-

trusts have been established. In all cases, deposits of contributions shall be

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treated as actually made only as of the date the funds are accepted as in good

order by the Administrator.

B. The Trustees shall hold, invest, and reinvest the Trust Fund. The Administrator

shall account for contributions, income, and payments made to or from the Trust.

The Trustees, Custodian and Administrator shall not be responsible for the

adequacy of the Trust Fund to meet and discharge any liabilities of the City.

C. Contributions to fund the benefits funded by the Trust shall consist of amounts

determined pursuant to this Code and any applicable collective bargaining

agreements.

3.52.210 Sub-Trusts and Accounts

Separate sub-trusts or accounts in the Trust Fund may be maintained by the Trustees

for appropriate categories of employees and/or Retirees. The Trustees shall not be

required to maintain separate investments for any sub-trust or account. Earnings may

be credited to each sub-trust or account from time to time.

3.52.220 Trust Payments

A. Trust assets may be used to defray the cost of the City's obligations to pay for

Health and Welfare Benefits for Retirees and their Dependents entitled to health

care coverage under Sections 3.28.1950 through 3.28.1995, and for reasonable

expenses, fees and allocated administrative fees and expenses. The benefits

amount shall be determined by Parts 16 and 17 of Chapter 3.28 and any amount

necessary to pay Health and Welfare Benefits as approved by the City Council.

B. Any amounts remaining in the Trust Fund after all Health and Welfare Benefits,

fees and expenses have been paid shall be retained for payment of future Health

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and Welfare Benefits until all City liabilities for such benefits and expenses have been satisfied.

Part 4

Accounts and Investments

3.52.300 Accounts

Except to the extent prohibited by applicable law, the Trustees or Custodian may

commingle the assets held by the Trust for investment purposes.

3.52.310 Investment of Trust Fund

Α. Except as otherwise provided by Regulation, or as delegated to the Custodian,

Administrator or an Investment Manager by the Trustees, the Trustees shall

have complete control of the management and investment of the Trust Fund,

and shall have all powers necessary or convenient to enable it to exercise such

control.

The Trustees or Trustees' delegatee may invest and reinvest funds held by the В.

Trust Fund in any investments which are legal investments under applicable law.

and shall have the discretion to decide the allocation of funds among such

investments. The Trustees may purchase, acquire, hold, lease, sell, and convey

real and personal Property, and place funds held herein with banks or trust

companies which have corporate trust powers, with insurance companies

authorized to do business within the State of California, and do all such other

acts permitted by law.

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Part 5

Composition, Powers and Duties of the Trustees

3.52,400 Composition of Board of Trustees

- A. The Board of Administration for the Federated City Employees Retirement Plan shall serve as the Trustees of this Trust. The appointment and term of Trustees shall be made pursuant to Part 10 of Chapter 2.08.
- B. By acceptance of their continued appointment to the Board of Administration of the Federated City Employees Retirement Plan, the Trustees have agreed to accept this Trust and to perform the duties of the Trustees prescribed hereunder.

3.52.410 Powers and Duties

In administering the Trust, the Trustees shall have such power and authority, including discretion with respect to the exercise of that power and authority, as may be necessary, advisable, desirable, or convenient to the Trustees, in their sole discretion as fiduciaries subject to the provisions of this Chapter, and consistent with Part 10 of Chapter 2.08, plus all powers and duties given to them by the provisions of Chapter 3.28, including the power and authority:

- A. To enforce rules and Regulations with respect to the Trust not inconsistent with the Trust, GASB 43 or GASB 45, IRC Section 115 or applicable law;
- B. To determine, consistent with the applicable laws, rules or regulations, all questions of law or fact that may arise as to any person or entity claiming rights under the Trust:

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- C. Subject to and consistent with GASB 43 and GASB 45, IRC Section 115 and applicable law, to construe and interpret the Trust and to correct any defect, supply any omission, or reconcile any inconsistency in the Trust;
- To adopt and amend investment policies, guidelines, restrictions, and requirements;
- E. To utilize Trust assets for the provision of Health and Welfare Benefits in accordance with this Chapter, for Retirees and Dependents who are eligible for a benefit as determined under Parts 16 and 17 of Chapter 3.28 and any other Health and Welfare Benefits as approved by the City Council and the payment of reasonable expenses of the Plan and the Trust;
- F. To implement termination of trusteeship and transfer of assets to successor trustees as permitted by law;
- G. To employ and contract with actuaries, auditors, accountants, investment advisers, investment brokers, other consultants, medical personnel, and other agents and employees;
- H. To collect and disburse all investment proceeds under the Trust;
- To provide for and promulgate all the Regulations and forms that are deemed as necessary or desirable in fulfilling its purposes of assisting in funding Health and Welfare Benefits and in maintaining proper records and accountings consistent with GASB 43 and GASB 45 and Internal Revenue Service requirements;
- To bring and defend actions, sue and be sued, and plead and be impleaded;
- K. To authorize the expenditure of funds for the reasonable expenses of the Trustees while engaged in the performance of their duties, including entering into agreements and expending funds for investment related services selected by the Trustees;

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L. To employ insurance companies, banks, trust companies, and/or investment brokers as agents for the keeping of records and the receipt and disbursement of funds held by or due to the Trustees;

- M. To exercise generally any of the powers of an owner with respect to all or any part of the Trust Fund;
- N. To administer or require oaths and affirmations, to issue subpoenas to compel the attendance of witnesses or the production of books, papers and documents, and to take and hear testimony concerning any matter pending before the Trustees. If any person so subpoenaed neglects or refuses to appear or produce any book, paper or document as required by said subpoena, or shall refuse to testify before the Trustees or answer any questions which a majority of the Trustees decides to be proper and pertinent, the Trustees shall have the power to initiate proceedings in the proper court to have such person declared guilty of contempt. The Chief of Police shall, on request of the Trustee, have such subpoenas served by a police officer or officers; and
- O. To take all actions consistent with this Chapter necessary or appropriate to administer or carry out the purposes of the Trust; provided, however, the Trustees need not take any action unless in its opinion there are sufficient Trust assets available for the expense thereof.

3.52.420 Delegation by Trustees

In addition to the powers stated in Section 3.52.410, the Trustees may from time to time delegate to an Investment Manager, Custodian or committee formed by the Trustees certain of their fiduciary responsibilities under the Trust. Any such Investment Manager, Custodian of or committee shall remain a fiduciary until such delegation is revoked by the Trustees, which revocation may be without cause and without advance notice. Such individual, committee, or organization shall have such power and authority with

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respect to such delegated fiduciary responsibilities as the Trustees have under the Trust.

3.52.430 Limitations of Trustees' Responsibility

The Trustees' responsibilities and liabilities shall be subject to the following limitations:

A: The Trustees shall have no duties other than those expressly set forth in this

Chapter and those imposed on the Trustees by applicable laws.

B. The Trustees shall be responsible only for money and Property actually received

by the Trust, and then to the extent described in this Chapter.

C. The Trustees shall have no responsibility or duty to define the specific design of

the Health and Welfare Benefits, including but not limited to, selecting providers;

nor shall the Trustees be responsible for establishing the Health and Welfare

Benefits, or for setting the amount of premium subsidy to be paid by the Trust.

D. The Trustees shall not be responsible for any particular Federal, state or local

income, payroll or other tax consequence to the City or a Retiree, spouse, or

Dependent, and shall not be responsible for any tax-reporting obligation relating

to payments or disbursements to such persons.

E. No Trustee shall have any liability for the acts or omissions of any predecessor

or successor in office.

F. The Trustees shall have no liability for: (i) the acts or omissions of any

Investment Manager; (ii) the acts or omissions of any insurance company;

(iii) the acts or omissions of any Investment Fund; (iv) the acts or omissions of

any Custodian; or (vi) the acts or omissions of any contractor, vendor, actuary or

other service provider.

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3.52.440 Certification to Trustees

To the extent consistent with the Trustees fiduciary responsibilities, the Trustees may

rely upon a certification of the Administrator with respect to any instruction, direction, or

approval of such Administrator and may continue to rely upon such certification until a

subsequent certification is filed with the Trustees. The Trustees shall have no duty to

make any investigation or inquiry as to any statement contained in any such writing but

may accept the same as fully authorized.

3.52.450 Certification of Other Providers

The Trustees shall be protected further in relying upon a written certification that

purports to be from any Custodian, Investment Manager, insurance company, or mutual

fund as to the person or persons authorized to give instructions or directions on behalf

of such Custodian, investment Manager, insurance company or mutual fund and

continue to rely upon such certification until a subsequent written certification is filed

with the Trustees.

Part 6

Accounting and Recordkeeping

3.52.500 Maintenance of Records

The Trustees shall maintain or cause to be maintained suitable records, data, and

information relating to its responsibilities hereunder. The Trust's books and records

relating thereto shall be open to inspection and audit at reasonable times, subject to

applicable law.

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3.52.510 Independent Audit

The Trustees shall cause an independent audit of the Trust Fund to be performed

annually for each Trust Year, with results reported to the Trustees.

3.52.520 Annual Report

The Trustees shall publish an annual consolidated report for each Trust Year that

includes the fiscal transactions of the Trust Fund for the preceding Trust Year, and the

amount of the accumulated cash, securities, and other assets of the Trust Fund.

Part 7

Amendment and Termination

3.52.600 Amendment

This Chapter may be amended by the City Council at any time and in any manner

permitted by applicable law and not inconsistent with GASB 43 and GASB 45 or IRC

Section 115. Notice of such amendment shall be promptly provided to the Trustees,

Administrator, and Custodian.

3.52.610 irrevocability

The Trust created by this Chapter is irrevocable.

3.52.620 Termination

The Trust shall have perpetual existence, except if dissolved by the City Council.

Following any such dissolution, the Trustees shall proceed to wind up the affairs of the

Trust in an orderly manner and within a reasonable period of time considering relevant

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circumstances. After paying or making reasonable provision for the payment of alliabilities of the Trust, and upon receipt of such releases, indemnities or like documentation as the Trustees may reasonably deem necessary for the protection of the Trust and the Trustees, the Trustees shall distribute the remaining Property of the Trust to the City, in cash or in kind or partly each. This distribution shall be made for the sole purpose of assisting the City in the payment of Health and Welfare Benefits for Retirees and their Dependents who are eligible for a benefit as determined under Parts 16 and 17 of Chapter 3.28 and any other Health and Welfare Benefits as approved by the City Council, and the payment of reasonable expenses of the Plan and the Trust. In making the distribution, the Trustees may retain an amount for reasonable, allocated administrative fees and expenses. In no event will Trust assets be distributed to or revert to any entity that is not the State of California, a political subdivision of the State, or an entity whose income is excluded from gross income under IRC Section 115.

Part 8

<u>Miscellaneous</u>

3.52.700 Construction and Governing Law

- A. The provisions of this Chapter shall be construed, enforced and administered and the validity thereof determined in accordance with the IRC and the laws of the City and the State. If any provision of the Trust created by this Chapter is held to violate the IRC, State law, or this Code, or to be illegal or invalid for any other reason, that provision shall be deemed to be null and void, but the invalidation of that provision shall not otherwise affect the Trust.
- B. The headings and subheadings in this Chapter are inserted for convenience of reference only and are not to be considered in the construction of any provision of the Trust created by this Chapter.

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C. In resolving any conflict among provisions of this Chapter and in resolving any

other uncertainty as to the meaning or intention of any provision of this Trust

created by this Chapter, the interpretation that: (i) causes the Trust to be exempt

from tax as a governmental instrumentality under iRC Section 115; and

(ii) causes the Trust to comply with all applicable requirements of the IRC and

the laws of the City and the State, shall prevail over any different interpretation.

3.52.710 Parties Bound

The provisions of the Trust created by this Chapter shall be binding upon the Trustees,

the Administrator, the City and, as the case may be, the delegates, successors, and

assigns of each of them.

3.52.720 Necessary Parties to Disputes

Necessary parties to any accounting, litigation, or other proceedings relating to the

Trust shall include only the Trustees.

3.52.730 Severability

If any provisions of this Chapter shall be held by a court of competent jurisdiction to be

invalid or unenforceable, the remaining provisions of this Chapter shall continue to be

fully effective.

3.52.740 Nonassignment

The City may not commute, sell, assign, transfer, or otherwise convey any right to

assets it may have under the Trust. The assets held under this Trust shall not be

subject to the rights of the creditors of the City, the Trustees, the Custodian, or the

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Administrator, and shall be exempt from execution, attachment, prior assignment or any

other judicial relief or order for the benefit of creditors or other third person.

3.52.750 Erroneous Payments

If the Trustees or the Administrator make any payment that, according to the terms of

the Trust, and the benefits provided hereunder, should not have been made, the

Trustees or Administrator may recover that incorrect payment, by whatever means

necessary as allowed by State law, whether or not it was made due to the error of the

Trustees or Administrator, from the person to whom it was made or from any other

appropriate party, including but not limited to deduction of the amount of the incorrect

payment when making any future payments to or on behalf of the recipient of the

incorrect payment.

3.52.760 Release

Any payment to an insurance company, or its designee, shall, to the extent thereof, be

in full satisfaction of the claim of such entity being paid thereby and the Trustees or

Administrator may condition payment thereof on the delivery by the insurance company,

or its designee, of a duly executed receipt and release in such form as may be

determined by the Trustees.

SECTION 8. The Director of Retirement Services shall have the following powers and

duties with respect to funds deposited in the Federated City Employees Health Care

Trust Fund that is established pursuant to Chapter 3.52, until such time as the earlier of

the following events to occur after the effective date of this Ordinance (i) the first

regularly scheduled meeting of the Board of Administration of the Federated City

Employees Retirement Plan, (ii) the first meeting of the Board of Trustees of the

Federated City Employees Health Care Trust that can be convened:

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- A. The power to select and negotiate and execute a contract with a custodian bank for the deposit of funds that are received by the Trust created pursuant to Chapter 3.52; and
- B. The power to enter into agreements with one or more investment managers for the investment of funds that are received by the Trust created pursuant to Chapter 3.52, into liquid asset classes accordance with the adopted investment policy of the Federated Employees Retirement Plan.

PASSED FOR PUBLICATION of title this 17th day of May, 2011, by the following vote:

AYES:

CAMPOS, CHU, CONSTANT, HERRERA, KALRA,

LICCARDO, OLIVERIO, PYLE, ROCHA; REED.

NOES:

NONE.

ABSENT:

NGUYEN.

DISQUALIFIED:

NONE.

CHUCK REED

huck Kee S

Mayor

DENNIS D. HAWKINS, CMC City Clerk

SAN JOSE POST-RECORD

95 S. Market St., Ste. 535, SAN JOSE, CA 95113 Telephone (408) 287-4866 / Fax (408) 287-2544

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SUZANNE GUZZETTA SAN JOSE CITY CLERK 200 E. SANTA CLARA ST. SAN JOSE, CA - 95113

PROOF OF PUBLICATION

(2015.5 C.C.P.)

State of California County of SANTA CLARA

Notice Type: GORSJ - SAN JOSE ORDINANCE (1 PUB)

Ad Description: ORDINANCE #28814

SJ#: 2105254

ORDINANCE NO. 29914

OPDINANCE OF THE CITY OF SAN SE AMENDING TITLE 3 OF THE SAN SE MUNICIPAL CODE TO AGD A W CNAPTER 3.52, AHD TO AMEND CTIONS 3.29.380, 3.26.1980, 3.1953, 3.22.2038 ÅND 3.29.2046 D AOD A NEW SECTION 3.29.96 CHAPTER 3.28 OF TITLE 3 FOR EPURPOSE OF ESTABLISHING AN TRUST PURSUANT TO SECTION OF THE RYTEMBLA REVENUE OF RELATED AND THE PURSUANT TO SECTION OF THE RYTEMBLA AND AND THE PURSUANT OF HET FUNDED AND THE PURSUANT OF HET FILE HEALTH CARE BENEFIT FUNDED TO THE PURSUANT OF HET HEE HEALTH CARE SECO FOR PUGLICATION of title this day of May, 2011, by the following by

voie: AYES: CAMPOS, CHU, CONSTANT, HERBERA, KALRA, LICCARDO, OLIVERIO, PYLE, REEO, ROCHA. HOES: NONE. ASSENT: NGLIVEN, NISQUALIFIED: NONE.

CHUCK REED Mayor ATTEST: DENNIS HAWKINS, CMC City Clerk 5/20/11

SJ-2195254#

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the abovo entitled matter. I am the principal clark of the printer and publisher of the SAN JDSE PDST-RECORD, a newspaper published in the English language in the city of SAN JOSE, county of SANTA CLARA, and adjudged e newspaper of general circulation as defined by the laws of the State of California by the Superior Court of the County of SANTA CLARA, State of California, uniter date 02/03/1922, Case No. 27844. That the notice, of which the annexed is a printed copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

05/20/2011

Executed on: 05/20/2011 At Los Angeles, California

I certify (or declare) under penalty of perjury that the foregoing is true and

EXHIBIT H

3.20.540 Contributions - Difference to widow when.

In the event of the death of a member drawing retirement compensation, if at the time of the death of said member he has received less than twelve monthly retirement payments, then the difference between the number of payments said member received up to the time of his death and twelve payments shall be paid in monthly payments into said member's estate or to his widow. For example, if a member dies after he has retired and has received three monthly retirement payments at the time of his death, there shall be paid to his estate, or to his widow, nine additional monthly payments.

(Prior code § 2901.53.)

Chapter 3.24

RETIREMENT SYSTEM SUBSEQUENT TO JULY 1, 1951

Parts:

- 1 General Provisions and Definitions
- 2 Administration
- 3 Employee Status and Contributions
- Retirement Fund
- 5 Records and Reports
- 6 Membership
- 7 Member Contributions
- 8 Member Contributions after Effective Date
- 9 Procedure on Contributions
- 10 City Contributions
- 11 Service
- 12 Absences
- 13 Retirement
- 14 Benefits
- 15 Service Retirement Generally
- 16 Service Retirement for Certain Members oo and after Effective Date
- 17 Disability Retirement Generally
- 18 Disability Retirement for Certain Members after Effective Date
- 19 Optional Settlements
- 20 Death
- 21 Special Benefits for Certain Former Health Department Employees
- 22 Special Benefits for Certain Former Communications Department Employees

- 23 Medical Benefits for Ccrtain Retirees and Survivors
- 24 Dental Benefits for Retired Members and Survivors

Part 1

GENERAL PROVISIONS AND DEFINITIONS

Sections:

- 3.24.010 Title for citation.
- 3.24.020 Continuance of federated employees' retirement system.
- 3.24.030 Prior retirement system superseded.
- 3.24.040 Purpose of chapter provisions.
- 3,24.050 Definitions.
- 3.24.060 Limited applicability of Chapter 3.24 on and after July 1, 1975.

3.24.010 Title for citation.

This Chapter 3.24 may be cited as the "San José retirement code."

(Prior code § 2904.1.)

3.24.020 Continuance of federated employees' retirement system.

The San José federated employees' retirement system created by Ordinance 2774, as amended, presently codified as Chapter 3.20 of the San José Municipal Code, is continued in existence under this chapter.

(Prior code § 2904.3.)

3.24.030 Prior retirement system superseded.

On and after July 1, 1951, and subject to she provisions of Section 3.24.450 and Section 3.24.1210 of this chapter, this chapter 3.24 shall supersede the provisions of Chapter 3.20 as to the employees who become members of the retirement system which is the subject of this chapter.

(Prior code § 2904.)

3.24.040 Purpose of chapter provisions.

The purpose of this chapter is to effect economy and efficiency in the public service by providing a means whereby employees who become superannuated or otherwise incapacitated, without hardship or prejudice, may be replaced by more capable

§ 3.24.040

employees, and to that end provide a retirement system consisting of retirement allowances and death benefits. It is the intent of the city council that the retirement provisions in this chapter be amended from time to time to include provisions that will improve the system. To this end it is intended that the reports of the board will be considered, along with other available data, as to the desirability of changes in the retirement system.

(Prior code § 2904.2.)

3.24.050 Definitions.

Unless the context otherwise requires, the definitions set forth in Part 4 of Chapter 2.08 and this part of the code govern the construction of this chapter.

 "Accumulated additional contributions" means the sum of all additional contributions standing to the credit of a member's individual account, and interest thereon.

 "Accumulated normal contributions" means the sum of all normal contributions standing to the credit of a members individual account, and interest thereon.

- "Accumulated prior service contributions" means the sum pf all prior service eontributions standing to the credit of a members individual account and interest thereon.
- "Accumulated contributions" means accumulated normal contributions plus any accumulated additional contributions and plus accumulated prior service contributions standing to the credit of a member's account.
- "Actuarial equivalent" means a benefit of equal value when computed upon the basis of the mortality tables adopted and the interest rate fixed by the board.
- "Actuary" means the actuary retained on a consulting basis by the board.
- "Additional contributions" means contributions made by members in addition to their normal contributions.
- "Annuity" means payments for life derived from contributions made by a member.
- "Beneficiary" means any person, including a corporation, designated by a member to receive, or who qualifies for receipt of, a benefit payable under this chapter.

- "Benefit" means the retirement allowance, death benefit, or refund of accumulated contributions.
- 11. "Board" means the retirement board created in Part 10 of Chapter 2.08 of this code.
- 12. "City" means the city of San José.
- 13. "Compensation" means the remuneration paid in cash out of funds controlled by the city, plus the monetary value, as determined by the board, of living quarters, board, lodging, fuel, laundry and other advantages of any nature furnished a member by the city in payment for his services. Overtime excluded in computing compensation. When the compensation of a member is a factor in any computation to be made under this chapter, there shall be excluded from such computations any compensation based on overtime put in by a member.
- 14. "Compensation earnable" by a member means the average monthly compensation, as determined by the board, upon the basis of the average time put in by members in the same group or class of employment and at the same rate of pay. The computation for any absence of a member shall be based on the compensation earnable by him at the beginning of the absence and that for time prior to entering city service shall be based on the compensation earnable by him in the position first held by him in such service.
- position first held by him in such service.

 15. "Employee" means any person in the employ of the city whose compensation, or at least that portion of his compensation which is provided by the city, is paid out of funds directly controlled by the city. "Funds directly controlled by the city" includes funds deposited in and disbursed from the city treasury in payment of compensation, regardless of their source.
- 16. "Final compensation" means the highest average annual compensation earnable by a member during any period of three consecutive years during his membership in the system. For the purposes of this chapter, periods of service separated by breaks in service may be aggregated to constitute a period of three consecutive years, if the periods of service are consecutive except for such breaks. If a break in service did not exceed six months in duration, time included

in the break, and compensation eamable during such time shall be included in computation of final compensation. If a break in service exceeded six months in duration, the first six months thereof and the compensation earnable during those six months shall be included in computation of final compensation, but time included in the break which is in excess of six months and the compensation eamable during such excess time shall be excluded in computation of final compensation.

- 17. On and after September 1, 1953, to August 31, 1956, the "fiscal year," for the purpose of this chapter, is any year commencing on September 1st and ending on August 31st next following; provided, that the fiscal year commencing July 1, 1952 shall end on August 31, 1953, On and after July 1, 1957, the "fiscal year," for the purpose of this chapter, is any year commencing on July 1st and ending on June 30th next following; provided, however, that the fiscal year commencing September 1, 1956, shall be a ten-month fiscal year ending on June 30, 1957.
- 18. "Member" means any person included in the membership of this system.
- 19. "Normal contributions" means contributions made by a member at the normal rates of contribution fixed by the board, but does not include additional contributions by
- 20. "Pension" means payments for life derived from contributions made from employer controlled funds.
- 21. "Prior service contributions" means contributions made by members on account of service rendered prior to July 1, 1951. 22. "Regular interest" means interest at the
- annual rate fixed by the board, compounded annually, plus such additional interest as the board may credit from year to year.

23. "Retirement" means withdrawal from active service with a retirement allowance granted under this chapter.

24. "Retirement allowance" means the service retirement allowance or the disability

allowance.

"Retirement fund" means the San José federated employees retirement fund created

- by Ordinance 2774, as amended, presently codified in Chapter 3.20 of the San José Municipal Code, and continued in existency by this chapter.
- 26. "Retirement system" or "this system" means the federated city employees retirement

(Prior code §§ 2904.4-2904.31.)

3.24.060 Limited applicability of Chapter 3.24 on and after July 1, 1975.

Anything elsewhere in this Chapter 3.24 to the contrary notwithstanding, no person shall become, on or after July 1, 1975, a member of the retirement plan established by the provisions of this chapter, and, except as may be otherwise provided by the provisions of Chapter 3.28 of this code, no member or former member of the retirement plan established by the provisions of this Chapter 3.24, and no survivor, beneficiary or estate of any such member or former member shall have any rights or be entitled to any benefits under the provisions of this Chapter 3.24 if and after said member or former member becomes a member of the 1975 federated employees retirement plan established by the provisions of Chapter 3.28 of this code.

(Prior code § 2904.31a.)

Part 2

ADMINISTRATION

Sections:

3.24.100	Creation.
3.24.110	Powers and duties.
3.24.120	Determination of employee
	membership conditions.
3.24.130	Benefit determination authority
3.24.140	Authority to secure medical
•	service and edvice.

3.24.150 Actuarial investigation requirements. 3.24.160 Adoption of tables and interest

rates. 3.24.170 Interest credited on contributions -

Generally.

Interest credited on contributions -3.24.180 Additional earnings.

3.24.190 Hearings.

Prohibited financial transactions. 3.24.200 Direct transfers of eligible rollnver 3.24.210

distributions.

3.24.100 Creation.

For creation of the retirement board, see Chapter 2.08, Part 4 of this code. (Prior code § 2904.34.)

3.24.110 Powers and duties.

The board may make such rules not inconsistent with this chapter as it deems proper, and each member and each person retired is subject to this chapter and such rules.

(Prior code § 2904.40.)

3.24.120 Determination of employee membership conditions.

The board shall determine, within the scope of this chapter, the employees who are entitled to membership in the retirement system described in this chapter, and the board is the sole judge of the conditions under which persons may be admitted to and may continue to receive benefits under this system.

(Prior code § 2904.42.)

3.24.130 Benefit determination authority.

Subject to this chapter and its rules, the board shall determine and may modify benefits for service and disability and death. (Prior code § 2904.41.)

3.24.140 Authority to secure medical service and advice.

The huard shall secure and pay reasonable compensation for such medical service and advice as is necessary to discharge its duties respecting matters involving disability or death or both.

(Prior code § 2904.43.)

3.24.150 Actuarial investigation requirements.

The board shall keep in convenient form such data as are necessary for the actuarial valuation of this system. The board shall cause an actuarial investigation to be made from time to time and as often as may be reasonably necessary to keep the plan actuarially sound, but not less frequently than once each five years commencing from and after January 1, 1971. The actuarial investigation shall consist of a report as to the mortality, service and compensation experience of members and persons receiving benefits, an actuarial valuation of the assets and liabilities of this system, and such other actuarial investigations as may be relevant to and for the benefit of the system.

From time to time the board shall determine the rate of interest being earned on the retirement fund. (Prior ende § 2904.44.)

3.24.160 Adoption of tables and interest rates.

Upon the basis of any or all of such investigation, valuation and determination, the board shall adopt such mortality, service and other tables and interest rates as it deems necessary and, subject to Sections 3.24.570, 3.24.580, 3.24.720 and 3.24.730 make revision in rates of contributions of members as it deems necessary to provide the benefits for which the rates for normal contributions are required to be calculated. No adjustment shall be included in the new rates for time prior to the effective date of such revision.

(Prior code § 2904.45.)

3.24.170 Interest credited on contributions - Generally.

The board shall credit all contributions of members, retired members and the city, in the retirement fund, with interest at the current rate, cumpounded at each June 30th and December 31st. (Prior code § 2904.46.)

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3.24.180 Interest credited on contributions - Additional earnings.

As of Jame 30th, the buard may credit to all contributions held in the retirement fund such interest in excess of the current rate as it deems proper in the light of the earnings on the retirement fund during the fiscal year, but nut more than the difference between such earnings and the interest credited at the current rate to contributions during the fiscal year. In the ealculation of benefits under any mortality table adopted by the board, only the current rate of interest is allowed on contributions under this chapter. (Prior code § 2904.47.)

3,24.190 Hearings.

A. The board may, in its discretion, hold a hearing for the purpose of determining any question presented to it involving any right, benefit or obligation of a person under this chapter. Any applicant may file an application for rehearing of any application, within thirty days after written notice of the determination by the retirement board has been sent by registered mail to the applicant or his attorney of record, upon any of the following grounds:

- That the retirement board acted without and in excess of its powers;
- That the order, decision or award was procured by fraud;
- That the evidence does not justify the determination of the retirement board;
- That the applicant has discovered new evidence material to him which he could not, with reasonable diligence, have discovered or procured at the hearing.
- B. The determination of the retirement board on any application for rehearing shall be made within sixty days after the filing thereof.

(Prior code § 2904.48.)

3.24.200 Prohibited financial transactions.

A board member or employee of the board shall not, directly or indirectly:

- A. Have any interest in the making or any investment, or in the gains or profits accruing therefrom;
- B. For himself, or as an agent or partner of others, borrow any funds or deposits of this system, nor use such funds or deposits in any manner except to make such current and necessary payments as are authorized by the board;
- Become an indorser, surety or obligor on investments by the board.

(Prior code § 2904.33.)

3.24.210 Direct transfers of eligible rollover distributions.

- A. If, under the provisions of this chapter, a person becomes entitled to an eligible rollover distribution, the person may elect to have the distribution or any portion thereof paid directly to an eligible retirement plan specified by the person.
- B. The election made putsuant to this section shall be in accordance with terms and conditions established by the board.
- C. Upon the exercise of the election by a person pursuant to this section, the distribution from the retirement fund of the amount designated by the person, once distributable under the provisions of this chapter, shall be made in the form of a direct transfer to the eligible retirement plan so specified.
- D. For the purposes of this section, "eligible rollover distribution" means a distribution from the retirement fund which constitutes an eligible

- rollover distribution within the meaning of Section 401(a)(31)(C) of the Internal Revenue Code.
- E. For purposes of this section, "eligible retirement plan" means a plan which constitutes an eligible retirement plan within the meaning of Section 401(a)(31)(D) of the Internal Revenue Code,

(Ord. 24814.)

Part 3

EMPLOYEE STATUS AND CONTRIBUTIONS

Sections:

- 3.24,250 Employee status change Secretary to notify board.
- 3.24.260 Employees to furnish data.
- 3.24,270 Determination of status questions.
- 3.24.280 Adjustment af cantributions and payments.

3.24.250 Emplayee status change - Secratary to notify board.

The secretary shall give the board as it may require notice of the change in status of any member, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death, and other pertinent information.

(Prior code § 2904.49.)

3.24.260 Emplayees to furnish data.

Each employee shall file with the board such information affecting his status as a member as the board may require.

(Prior code § 2904.50.)

3.24.270 Determination of status questions.

If there is disagreement between any member and the board with respect to the length of service, compensation or age of any member, or if any member refuses or falls to give the board a statement of his city service, compensation or age, the board shall hold a hesring, and upon the basis of available testimony and available records, determine such length of service, compensation or age.

(Prior code § 2904.51.)

3.24.280 Adjustment of contributions and payments.

If more or less than the correct amount of contribution required of members of the city is paid, proper adjustment shall be made in connection with subsequent payments, or such adjustments may be made by direct cash payments between the member or the city and the board. Adjustments to correct any other errors in payments to or by the board may be made in the same manner.

(Prior code § 2904.52.)

Part 4

RETIREMENT FUND

Sections:

3.24.300	Continuation of federated employees' retirement fund.
3.24.310	Control and administration.
3.24.320	Custodian of retirement fund -
	Payment.
3.24.330	Deposit of funds.
3.24.340	Earnings from funds.
3.24.350	Investment of funds - Conditions
	and restrictions.
3.24.355	Security loan agreements.
3.24.360	Investment of funds - Delegation of authority.
3.24.370	Investment counseling -
	Restrictions.
3.24.380	Redepositing of unclaimed
	poyments.

3.24.300 Continuation of federated employees' retirement fund.

The "San José federated employees' retirement fund," in the city treasury is continued in existence. (Prior code § 2904.53.)

3.24,310 Control and administration.

The board has exclusive control of the administration and investment of the retirement fund. (Prior code § 2904.54.)

3.24.320 Custodian of retirement fund - Payment.

A. Except as provided in subsection B., the city director of finance is the sole custodian of the

- retirement fund, subject to the exclusive control of the board as to administration and investment. All payments from the fund shall be made in the manner required for the disbursement of other public funds, but only upon authorization of the board.
- B. The board may enter into contractual arrangements with California banks or with national banking associations to provide master custody services with respect to the assets of the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.

(Prior code § 2904.55; Ord. 25092.)

3.24.330 Deposit of funds.

The board shall deposit, to the credit of the retirement fund, all amounts received by it under this chapter in the city treasury or in such custodial accounts as are established with the custodian bank. (Prior code § 2904.57; Ord. 25092.)

3.24.340 Earnings from funds.

Interest earned on any cash deposit in a fund by the treasurer and income on other assets constituting a part of the fund shall be credited to the fund as received. Income of whatever nature earned on the retirement fund during any fiscal year in excess of the interest credited ta contributions during that year shall be retained in the fund as a reserve against deficiencies in interest earned in other years, losses under investments, and other contingencies. The board, however, may apply to reduce the book value of securities purchased, or all or part of the excess of the proceeds of the sale of securities over the book value of the securities sold:

- If the purchase of securities is made with those proceeds; and
- B. If the terms of both securities from the date of sale or purchase, as the case may be, to the respective dates of maturity do not differ by more than three years.

(Prior code § 2904.56.)

3.24,350 Investment of funds - Conditions and restrictions.

The board shall invest and reinvest the moneys in the retirement fund in accordance with the following standards:

- A. The assets of the retirement plan are trust funds and shall be held for the exclusive purposes of providing benefits to members of the plan and their beneficiaries and defraying reasonable expenses of administering the system.
- B. The board shall discharge its duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, members of the system and their beneficiaries, minimizing city and member contributions to the retirement fund, and defraying reasonable expenses of administering the system. The board's duty to the members and their beneficiaries shall take precedence over any other duty.
- C. The board shall discharge its duties with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of like character and with like aims.
- D. The board shall diversify the investments of the system so as to minimize the risk of lnss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

(Prior code § 2904.58; Ords. 19988, 21144, 21606, 22509, 23559, 25092.)

3.24.355 Security loan agreements.

- A. The retirement board may enter into contractual arrangements with broker-dealers and with banks for such broker-dealers or banks to provide security lending services pursuant to security lnan agreements on such conditions, consistent with this section, as the board may determine.
- B. For the purposes of this section, "security loan agreement" and "marketable securities" shall be defined as follows:
 - "Security loan agreement" means a written
 contract whereby a legal owner, the lender,
 agrees to lend specific marketable corporate
 or government securities for a period nnt to
 exceed one year. The lender retains the right
 to collect from the borrower all dividends,
 interest, premiums, rights, and any other
 distributions in which the lender would
 otherwise have been entitled. The lender
 waives the right to vote the securities during
 the term of the loan.
 - "Marketable securities" means securities that are freely traded on recognized exchanges or market places.

- C. Any contractual arrangements entered into pursuant to this section shall require all of the following:
 - The lender may terminate the security loan agreement upon not more than five business days' notice as agreed and the borrower may terminate the security loan agreement upon not less than two business days' notice as agreed.
 - The borrower shall provide collateral to the leader in a form approved by the board, and shall be in an amount equal to at least one hundred two percent of the market value of the loaned securities as agreed.
 - Daily monitoring of the market value of the lnaned securities.
 - 4. Payment by the borrower of additional cultateral on a daily basis, or at such times as the value of the loaned securities increases, to agreed-upnn ratios, but in no event shall the amount of the collateral be less than the market value of the loaned securities.
 - Maintenance of detailed records of all security lnans.
 - Development of controls and reports to monitor the conduct of the transactions.
 - Publication of the net results of the security loan transactions separate from the results of other investment activities.

(Ords. 21865, 24690.)

3.24.360 Investment of funds - Delegation of authority.

Without limiting the authority of the board itself to invest and reinvest the moneys of the retirement fund as provided in Section 3.24.350, the board may adopt an investment resolution or resolutions containing detailed guidelines, consistent with Section 3.24.350. While the resolution or resolutions are in effect, investments consistent with such guidelines may be made by an officer of the board, an officer or employee of the city, or a qualified investment advisor who has entered into a contractual arrangement pursuant to Section 3.24.370, provided that such nfficer, employee or advisor has been delegated such authority by the board and such officer, employee or advisor has been designated by name in the investment resolution nr resolutions. Any transactions made pursuant to the foregoing provisions of this section shall be reported monthly to the board by the person

or persons to whom the board has delegated such authority.

(Prior code § 2904.59; Ords. 20116, 21077, 21304, 23559, 25092.)

3.24.370 Investment counseling - Restrictions.

- A. The board may enter into contractual arrangements with any person or persons or association or associations, who meet the requirements of subsection B. or C., to provide counsel to the board with respect to the board's policies of investing and reinvesting of moneys in the retirement fund. Such contracts shall be entered into in the name of the board of administration for the federated city employees retirement system.
- B. Any person or association who provides services to the board with regard to financial securities:
 - Shall be a person or association whose principal business consists of investment conoseling services; and
 - Shall be registered as an investment adviser under such laws as may require such registration.
- C. With respect to real estate advisors, tha board shall enter into contractual arrangements only with persons or associations whose principal officers are engaged in the business of advising and evaluating commercial, industrial or residential real estate investments, mortgage banking, or property management, and which are duly licensed to perform real estate advisor services in the jurisdiction where the real property is located.

(Prior code § 2904.60a; Ords. 25092, 25641.)

3.24.380 Redepositing of unclaimed payments.

Notwithstanding any provision in this chapter or any other ordinance to the contrary, whenever any check drawn against the retirement fund in payment of accumulated contributions or benefits remains unclaimed, or the claimant cannot be found, the proceeds of such check shall be redeposited in the retirement fund and held for the claimant without further accumulation of interest, and such redeposit shall not operate to reinatate the membership of the claimant in this system. If such proceeds, whether heretofore or hereafter redeposited, are not claimed within four years after the date of redeposit, they shall revert to and become a part of the accumulated contributions of the city, held in the retirement fund to

meet the liabilities of the city on account of current services. The board may at any time after reversion of proceeds to the city, and upon receipt of proper information satisfactory to it, return such proceeds so held for the city to the credit of the claimant, to be administered in the manner provided under this system.

(Prior code § 2904.60; Ord. 25092.)

Part 5

RECORDS AND REPORTS

Sections:

3.24.400 Records and accounts -Information required.

3.24.410 Financial statements.

3.24.420 Annual reports.

3.24,400 Records and accounts - Information required.

In addition to other records and accounts, the board shall keep such records and accounts as may be necessary to show at any time:

- A. The total accumulated contributions of members;
- B. The total accumulated contributions of retired members less the annuity payments made to such members:
- C. The accumulated contributions of the city held for the benefit of members on account of current service;
- D. All other accumulated contributions of the city, which shall include the amounts available to meet the obligation of the city on account of benefits that have been granted to retired employees and on account of prior service of members.

(Prior code § 2904.61.)

3.24.410 Financial statements.

The hoard shall cause to be issued, as of the date of the investigation and valuation made pursuant to Section 3.24.160, a financial statement showing an actuarial valuation of the assets and liabilities of this system and a statement as to the accumulated cash and securities in the retirement fund as certified by the auditor. The board shall include in the statement, which shall be issued as of the end of each fiscal year, other than the year of the investigation, assets and liabilities resulting from current and prior service, in

amounts equal only to accumulated contributions held on account of such service. (Prior code § 2904.62.)

3.24.420 Annual reports.

As soon as practicable after the close of each fiscal year, the board shall file with the city council a report of its work for such fiscal year, and the board shall make the report available to any member who requests it. Among other things, the report shall contain recommendations for or against changes in the retirement system.

(Prior code § 2904.63.)

Part 6

MEMBERSHIP

Sections:

3.24.450	Continuance of membership.
3.24.460	Conditions of membership.
3.24.470	Exclusions from memhership - Generally.
3.24.480	Part-time employees excluded with exceptions,
3.24.490	City manager excluded - City auditor excluded with exceptions.
3.24.500	Termination of membership.
3.24.510	Election to allow accumulated contributions to remain in fund -
	Procedures.

3.24.450 Continuance of membership.

All members of the retirement system immediately prior to the time this chapter became operative continue to be members of this system. (Prior ende § 2904.64.)

3.24.460 Canditions of membership.

Every other employee who is not excluded by the following sections becomes a member of the retirement system upon entry or reentry into city service.

(Prior code § 2904.65.)

3.24.470 Exclusions from membership - Generally.

A. The following persons are hereby excluded from membership in this system:

- The mayor and each member of the city council;
- Each member of a city board or commission who holds no other city office or position of employment which qualifies him for membership in this system;
- Persons temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or installation, or to render professional, scientific or technical services of an occasional or exceptional character;
- Persons employed pursuant to the provisions of subparagraph (5) of subsection (a) of Section 1101 of the Charter of the city in the event of an emergency to perform services required because of and during such emergency;
- Bach volunteer member of any police, fire or civil defense force or organization who holds no other city office or position of employment which qualifies him for membership in this system;
- Persons employed or whose services are contracted for pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;
- Persons employed pursuant to Section 1110 of the Charter of the city;
- Each person employed or paid on a parttime, per diem, per hour or any basis other than a monthly basis, unless he is a member by virtue of the provisions of Section 3.24.480;
- Persons employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons:
- 10. Persons who are members of any police, fire nr other retirement or pensinn system, other than this system or the Federal Social Security System or any other federal retirement system supported in whole or in part by funds of the United States, any state government or political subdivision thereof, the city or any other municipal enrporation, who are receiving or are entitled to credit in such other system for service rendered to the

city; provided, however, that nothing contained in this subdivision 10 shall be deemed to prohibit any such person from becoming a member of this retirement system after he has ceased being a member of the abovementioned police, fire or other retirement or pension system if he should thereafter otherwise qualify for membership.

B. For purposes of this section, persons who merely are receiving pensions or retirement allowances or other payments, from any source whatever, on account of service rendered to an employer other than the city while they were not in the service of the city are not, because of such receipi, members of any other retirement or pension system.

(Prior code § 2904.66.)

3.24.480 Part-time employees excluded with exceptions.

An employee serving on a part-time basis is excluded from this system unless:

- A. He becomes a member prior to the time this chapter becomes effective and continues to be a member by reason of Section 3.24.450;
- B. His employment is regular and continuous and in the opinion of the board will extend for more than one year, and requires service for at least one-half the time of employees serving on a fulltime basis; or
- Unless he is a member at the time he commences to serve on a part-time basis.

(Prior code § 2904.68.)

3.24.490 City manager excluded - City auditor excluded with exceptions.

 The city manager is excluded from membership in this system.

B. I. The city auditor is excluded from membership in this system unless he files or has already filed with the board an election in writing to become a member. He may make such election at any time during his employment by the city.

2. If he elects to become a member, he shall make contributions to this system in the amount which he would have contributed had be not been so excluded, plus interest which would have been credited on such contributions. If he affirmatively exercises the option:

- a. He shall receive credit for prior service, from the date of his first exclusion, in the same manner as if he had not been excluded; and
- b. The contributions of the city because of his membership shall be the same as they would have been had he not been excluded; and
- c. His rate of contribution shall be based on the nearest age at the time he first was excluded.

(Prior code § 2904.69.)

3.24.500 Termination of membership.

A person ceases to be a member:

Upon retirement;

- B. If he is credited with less than twenty years of city service, or with less than five hundred dollars in accumulated contributions, or with a greater amount and has not elected to allow it to remain in the retirement fund, and renders less than five years of service in any period of ten consecutive years.
- C. If he is paid mure than one-fourth of his normal contributions. For the purpose of this subsection C, deposit in the United States mail of a warrant drawn in favor of a member, addressed to the latest address of the member on file in the office of this system, constitutes payment to the member of the amounts for which the warrant is drawn.

(Prior code § 2904.70.)

3.24.510 Election to allow accumulated contributions to remain in fund - Procedures.

A. Any other provisions in this chapter to the contrary notwithstanding, if the city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the board to have resulted in permanent discontinuance (and in such case, as of the date of the determination by the board that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance, but the member does not reenter city service, and the amount of his accumulated contributions standing to his credit at that time is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of said

right is mailed by this system to the member's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the retirement fund. Pailure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to be credited with twenty years of service. An election to allow all or part of one's accumulated contribution to remain in the retirement fund may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn. Upon withdrawal of any accumulated contributions. the member withdrawing the same shall lose, and shall not be entitled to, any credit for any service on account of which such withdrawn contributions has theretofore been paid into the retirement fund. In determining the service for which a member is no longer entitled to credit upon withdrawal of all or part of his contributions, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest service rendered by the member in the city, or on account of his earliest service if so requested by the member at the time be withdraws such contributions.

- A member may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for service during such periods of time as may be designated by him, without withdrawing any contributions paid by him because of such service, provided he retains credit for not less than five years of continuous service; and in such event, in determining his eligibility for or the amount of any benefits to which he may become entitled, he shall be given no credit for any service so relinquished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 of this code.
- C. A member whose membership continues under this section is subject to the same age and disability requirements as apply to other members for service or for disability retirement but he is not subject to a minimum service requirement.

After the qualification of such member for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and service standing to his credit at the time of retirement and on the employer contributions held for him and calculated in the same manner as for other members, except that the provisions in this chapter for minimum service and disability retirement allowances do not apply to him unless he meets such minimum service requirements. Upon the death of such a member prior to retirement under this section, such death benefits as may be payable under Section 3.24.2000 of this chapter shall be computed upon the basis of his average annual compensation earnable for the year preceding the date of termination of the service for which he is entitled to credit, multiplied by the years of city service prior to such termination not to exceed six.

(Prior code § 2904.71.)

Part 7

MEMBER CONTRIBUTIONS

3.24.550 Normal rate of monthly

Sections:

	contributions.
3.24.560	Applicability limitation.
3.24.570	Normal contributions - Rate.
3.24.580	Normal contributions - Initial rate
3,24.590	Additional contributions.
3,24,600	Annuity to be actuarial equivalent
	of accumulated contributious.
3.24.610	Return of contributions -
	Conditions.
3.24,620	Return of contributions -
	Payment.
3.24.630	Contributions upon reentry into
	system.
3.24.640	Board may withhold accumulated
	normal contributions.
3.24.650	Redeposit of withdrawn
	contributions.
3.24.660	Normal rate of contributions
	following redeposit.
3.24.670	Effect of reentering system withou
	redepositing.

3.24.550 Normal rate of monthly contributions.

All members of the system shall be required to make normal monthly contributions to the system. The normal monthly contribution which shall be required of a member for each month from and after July 1, 1971, shall be a percentage of the compensation earned by him in such month. Said percentage, for normal contribution purposes, shall be the same for all members, regardless of their age or sex. Said percentage is hereinafter referred to as the member's "normal rate of monthly contribution." (Prior code § 2904.72.)

3.24.560 Applicability limitation.

On and after the effective date of this section, the provisions of this Part 7 shall no longer apply to any person to whom the provisions of Part 8 of Chapter 3.24 thereafter B. apply. (Prior code § 2904.83a.)

3,24.570 Normal contributions - Rate.

The normal rate of monthly contribution required of a member on or after July 1, 1971, or on or after the date he enters the system if he enters after July 1, 1971, shall be such that the amount of normal monthly contributions paid by him, when added to all normal monthly contributions paid by other members of the system for the same period, will be sufficient to pay 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered by members on and after July 1, 1971; provided and excepting, however, that whenever a normal rate of monthly contribution for members is adopted or from time to time amended, the new or amended rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions therefore actually required of members and any greater or lesser amount which, because of amendments to the system changing the time at which members may retire, or changing the benefits members will receive, or as a result of experience under the system, said members would have theretofore been required to pay in order to make their normal contributions equal to 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered prior to the effective date of the new or amended rate.

(Prior code § 2904.73.)

3.24.580 Normal contributions - Initial rate.

- A. Until amended or revised by the board in accordance with Section 3,24.170, the normal rate of monthly contribution required of members on and after July 1, 1971, shall be three and eighty-five one-hundredths percent of earned compensation.
- B. The normal rate of monthly contribution set forth in this section is based on the interest and mortality tables used by this retirement system on July 1, 1971, and subject to other provisions of this part, shall be adjusted by the board from time to time, in accordance with the provisions of Section 3.24.170.

(Prior code § 2904.73a.)

3.24.590 Additional contributions.

Subject to rules prescribed by the board, any member may elect to make contributions in excess of his normal contributions for the purpose of pruviding additional benefits. The exercise of this privilege by a member does not require the city to make any additional contributions. Upon application, the board shall furnish information concerning the nature and amount of additional benefits to be obtained from additional contributions.

(Prior code § 2904.77.)

3.24.600 Annuity to be actuarial equivalent of accumulated contributions.

The actual amount of annuity receivable by a member upon retirement shall be the actuarial equivalent of his accumulated contributions. (Prior code § 2904.76.)

3.24.610 Return of contributions - Conditions.

A member who, because of his employment by the city, is required to become a member of any other retirement system supported in whole or in part by public funds shall, with respect to his right to withdraw his accumulated contributions, be considered as permanently separated from city service. (Prior code § 2904.78.)

3.24.620 Reture of contributions - Payment.

If the city service or membership herein of a member is discontinued, except by death on account of which a death henefit is payable or by retirement, he shall, six months after date of discontinuance, termination or resignation, be paid such part of his accumulated contributions as he demands, except that

if he is credited with less than five hundred dollars in accumulated contributions, or with a greater amount, and has not elected to allow it to remain in the retirement fund and, in the opinion of the board, is permanently separated from city service by reason of such discontinuance, he shall be paid forthwith all of his accumulated contributions.

(Prior code 3.24.660 § 2904.79.)

3.24.630 Contributions upon reentry into system.

Upon a member's reentry into the retirement system on and after July 1, 1971, at reinstatement from service or disability retirement, his oormal rate of monthly contribution shall be the same as that of other members.

(Prior code § 2904.74.)

3.24.640 Board may withhold accumulated normal contributions.

The board may withhold, for not more than one year after a member last rendered city service, all or part of his accumulated normal contributions if after a previous discontinuance of city service he withdrew all or a part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund.

(Prior code § 2904.80.)

3.24.650 Redeposit of withdrawn contributions.

A member may redeposit in the retirement fund, in one sum or in not to exceed thirty-six monthly or seventy-two semimonthly payments:

- A. An amount equal to the accumulated contributions that he has withdrawn at one or more terminations of service, but in reverse chronological order in which they occurred, and subject to minimum payments fixed by the board; and
- B. An amount equal to additional interest which would have been credited to his account at the date of the election, had such contributions not been withdrawn; and
- C. If he elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of such election, at the rate of interest currently being used from time to time under the system.

(Prior code § 2904.81.)

3.24.660 Normal rate of contributions following redeposit.

If upon a member's reentry into the system on or after July 1, 1971, he redeposits his accumulated contributions, his membership is the same as if it were unbroken by such termination. His normal rate of monthly contribution for future years shall be the same as that of other members.

(Prior code § 2904.82.)

3.24.670 Effect of reentering system without redepositing.

Upon reentering this system on or after July 1, 1971, after a termination of his membership, if a member fails to elect within not more than thirty days after the date upon which notice of the right to redeposit is mailed by this system to the member's latest address on file in the office of this system, to make, or having so elected, subsequently does not make such redeposit, he reenters as a new member without credit for any service except the service rendered before he first became a member, credited to him before termination, and his normal rate of monthly contribution for future years is the same as that of other members. (Prior code § 2904.83.)

Part 8

MEMBER CONTRIBUTIONS AFTER EFFECTIVE DATE

Sections:

3.24.700	Applicability of Part 8 provisions.
3.24.710	Normal rate of monthly
	contributions.
3.24.720	Normal contributions - Initial rate.
3.24.730	Normal contributions - Rate.
3.24.740	Additional contributions.
3.24.750	Contributions on reentry into the
	system.
3.24,760	Annuity to be actuarial equivalent
	of accumulated contributions.
3.24.770	Return of contributions on joining
	other system.
3.24.780	When board mny withhald
3.24.700	
	accumulated normal contributions.

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- 3.24.790 Redeposit of withdrawn contributions.
- 3.24.800 Normal rate of contributions following redeposit.
- 3.24.810 Effect of reentering system without redepositing.

3.24,700 Applicability of Part 8 provisions.

- A. The provisions of this part shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system, and to contributions required of them after the effective date of this part, as follows:
 - All persons who become members of the retirement system on or after the effective date of this part, excepting persons who on the effective date of this part are on service retirement or disability retirement under this system who may subsequently be reinstated from such retirement;
 - Bach person who became a member of the retirement system prior to the effective date of this part and is such a member on said effective date if such person is given the option specified in Section 3.24.1560, and exercises such option in the manner and within the time specified in Section 3.24.1570;
- B. Any person who became a member of the retirement system prior to the effective date of this Part 8, and such member's contributions, shall continue to be governed by the provisions of Part 7 of this chapter and not by the provisions of this Part 8, if he is not given the option specified in Section 3.24.1560, or if he is given such option but refuses or fails to exercise the same in the manner and within the time specified in Section 3.24.1570.

(Prior code § 2904.83h.)

3.24.710 Normal rate of monthly contributions.

All members of the system to whom this Part 8 applies shall be required to make normal monthly contributions to the system. The normal monthly contribution which shall be required of a member for each month from and after July 1, 1971, shall be a percentage of the compensation earned by him in such month. Said percentage is hereinafter referred to as the member's "normal rate of monthly contribution." (Prior code § 2904.83i.)

- 3.24.720 Normal contributions Initial rate.
- A. Until amended or revised by the board in accordance with Section 3.24.160, the normal rate of monthly contribution required of members on and after July 1, 1971 shall be three and eightfive onc-hundredths percent of earned compensation.
- B. The normal rate of monthly contribution set forth in this section is based on the interest and mortality tables used by this retirement system on July 1, 1971, and, subject to other provisions of this part, shall be adjusted by the board from time to time, in accordance with the provisions of Section 3,24,160 of this code.

(Prior code § 2904.83k.)

3,24,730 Normal contributions - Rate.

For each member of the system to whom the provisions of this part apply, the normal rate of monthly contribution required on or 3.24.750 after July 1, 1971, or on or after the date he enters the system if he enters after July 1, 1971, shall be such that the amount of normal monthly contribution paid by him when added to all normal monthly contributions paid by other members of the system for the same period, will be sufficient to pay 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered by members on and after July 1, 1971; provided and excepting, however, that whenever a normal rate of monthly contribution for members is adopted or from time to time amended, the new or amended rate shall not include any amount designed to thereafter recover from members or return to members the difference between the amount of normal contributions theretofore actually required of members and any greater or lesser amount which, because of amendments to the system changing the time at which members may retire, or changing the benefits members will receive, or as a result of experience under the system, said members would have theretofore been required to pay in order to make their normal contributions equal 3/11ths of the cost of all pensions and other benefits which are or will become payable to members on account of current service rendered prior to the effective date of the new or amended rate.

(Prior code § 2904.83).)

3.24.740 Additional contributions.

Subject to rules prescribed by the board, any member may elect to make contributions for the purpose of providing additional benefits. The exercise of this privilege by a member does not require the city to make any additional contributions. Upon application, the board shall furnish information concerning the nature and amount of additional benefits to be obtained from additional contributions. (Prior code § 2904.830.)

3.24.750 Contributions on reentry into the system.

Upon a member's reentry nn or after July 1, 1971, into the retirement system at reinstatement from service or disability retirement, his normal rate of monthly contribution shall be the same as that of other members.

(Prior code § 2904.831.)

3.24.760 Annuity to be actuarial equivalent of accumulated contributions.

The actual amount of annuity receivable by a member upon retirement shall be the actuarial equivalent of his accumulated contributions. (Prior code § 2904.38n.)

3.24.770 Return of contributions on joining other system.

A member who, because of his employment by the city is required to become a member of any other retirement system supported in whole or in part by public funds, shall, with respect to his right to withdraw his accumulated contributions, be considered as permanently separated from city service. (Prior code § 2904.83p.)

3.24.780 When board may withhold accumulated normal contributions.

Anything in Section 3.24.510 to the contrary notwithstanding, the board may withhold, for not more than one year after a member last rendered city service, all or part of his accumulated normal contributions if after a previous discontinuance of city service he withdrew all or part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund. (Prior code § 2904.83q.)

3.24.790 Redeposit of withdrawn contributions.

A member to whom this part applies may redeposit in the retirement fund, in one sum or in not to exceed thirty-six monthly or seventy-two semimonthly payments:

- A. An amount equal to the accumulated contributions that he has withdrawn at one or more terminations of service, but in reverse chronological order in which they occurred, and subject to minimum payments fixed by the board; and
- B. An amount equal to additional interest which would have been credited to his account at the date of the election, had such contribution not been withdrawn; and
- C. If he elects to redeposit in other than one sum, interest on the unpaid balance of the amount payable to the retirement fund, beginning on the date of such election, at the rate of interest currently being used from time to time under the system.

(Prior code § 2904.83r.)

3.24.800 Normal rate of contributions following redeposit.

If, upon a member's reentry into the system on or after July 1, 1971, a member redeposits his accumulated normal contributions, his membership is the same as if it were unbroken by such termination. His normal rate of monthly contribution for future years shall be the same as that of other members. (Prior code § 2904.83s.)

3.24.810 Effect of reentering system without redepositing.

Upon reentering this system on or after July 1, 1971, after a termination of his membership, if a member fails to elect within not more than thirty days after the date upon which notice of the right to redeposit is mailed by this system to the member's latest address on file in the office of this system to make, or having so elected, subsequently does not make such redeposit, he reenters as a new member without credit for any service except service rendered before July 1, 1951, credit to him before termination, and his normal rate of monthly contribution for future years is the same as that of other members. (Prior code § 2904.83t.)

Part 9

PROCEDURE ON CONTRIBUTIONS

Sections:

3.24.850 Board te certify contribution rates to auditor.
3.24.860 Contributions to be credited to individual accounts.
3.24.865 City pick up of member contributions.
3.24.870 Effect of death benefit upon contributions.

3.24.850 Buard to certify contribution rates to auditor.

The board shall certify to the city auditor the normal and additional rates of contributions for each member employed therein.
(Prior code § 2904.84.)

3.24.860 Contributions to be credited to individual accounts.

Bach member's contribution deducted and remitted or otherwise paid to the board shall be credited by the bnard, together with regular interest, to an individual account of the member for whom the contribution was made. Payment of salaries or wages less such contribution is in full discharge of all claims and demands whatsoever for the service rendered by the members during the period covered by such payment, except the benefits afforded by this chapter. (Prior code § 2904.86.)

3.24.865 City pick up of member contributions.

- A. For the purposes of this section, contributions "picked up" by the city means contributions to this system which are designated as employee contributions but are treated as employer contributions for income tax purposes as authorized by Section 414(h)(2) of the internal Revenue Code (26 U.S.C.A. 414(h)(2)).
- B. Notwithstanding any other provision of law, the city may pick up, for the sole and limited purpose of deferring taxes as authorized by Section 414(h)(2) of the Internal Revenue Code (26 U.S.C.A. 414(h)(2)) and Section 17501 of the California Revenue and Taxation Code, all or a portion of the contributions required to be paid by a member of this system. Nothing herein shall

be construed to mean that any contributions so picked up by the city are to be treated as city contributions for any purpose other than the sole and limited purpose specified herein. Any contributions so picked up by the city shall be paid into the retirement fund and shall be treated in the retirement fund in the same manner as such contributions would be treated if they had not been picked up by the city.

C. Subject to applicable laws relating to meet and confer requirements, the city shall retain the authority periodically to increase, reduce or eliminate the pick up by the city of all or a portion of the contributions required to be paid by a member of this system, as authorized by this section.

(Ord. 22458.)

3.24.870 Effect of death benefit upon contributions.

If a death benefit has become or becomes payable before the payment of the total amount the member elected to pay under any election with respect to normal contributions permitted under this chapter, the member's entire compensation, or the service upon which that total amount was based, as the case may be, shall be included in the computation of the portion of the death benefit which is provided in subsection B of Section 3.24.2010, and the unpaid balance of the total amount shall not be paid to this system, nor shall it be included in the member's accumulated contributions which constitute a part of the basic death benefit. Any balance of any such total amount remaining unpaid at the retirement of a member for either service or disability shall become due and payable forthwith, and if nut paid, shall be deducted from the benefit otherwise payable. (Prior code § 2904.87.)

Part 10

CITY CONTRIBUTIONS

Sections:

3.24.900 Administrative costs of system.
3.24.910 Current service contributions - Designated.
3.24.920 Current service contributions - Rate.

3.24.930 Prior service contributions -Designated.

3.24.940 Prior service contributions - Rate. 3.24.950 Contributions for members

> entitled to credit for service formerly credited to them under police and fire department retirement plan.

3.24.960 Contributions for members entitled to credit under Section 3.24.1090 for service formerly credited to them under police and fire department retirement plan.

3.24.980 No credit to city upon withdrawal of member's accumulated contributions.

3.24.900 Administrative costs of system.

All administrative costs of the retirement system, as determined and approved by the board, including staff saiarles and indirect labor costs, shall be bome by and psid from the retirement fund. The payment of costs of staff salaries and indirect labor from the retirement fund shall be subject to such limitations on said costs as may be agreed upon by the city and the employee arganizations representing members of this system and set forth in the appropriate memoranda of . agreement. Costs for staff salaries and indirect labor in excess of said limitations, if any, shall be paid by

(Prior code § 2904.90; Ord. 23433.)

3.24.910 Current service contributions -Designated.

From and after July 1, 1971, the city's current service rate of contributions shall consist of the sum of two rates. The first rate, hereinafter referred to as the "normal city current service rate," shall be such that the amount of contributions paid by the city under such rate for each month of current service for which such rate is imposed, as compared to the amount of normal contributions required of members for each such month of current service, shall be in the ratio of eight for the city to three for members. The second rate, bereinafter referred to as the "city current service deficiency rate," shall be such as may be necessary to make up, over a period of thirty years, any existing deficiency in the amounts of normal current service contributions theretofore contributed hy members and by the city for the payment of the cost of all pensions and other benefits which are or

will become payable to members on account of current service, such deficiencies being those resulting from amendments to the system changing the time at which members, may retire, or changing the benefits members will receive, or resulting from experience under the system. From and after July 1, 1971) and until the amount accumulated in the retirement fund from normal contributions of members and from city current service contributions becomes not less than the present value of all amounts thereafter payable from the retirement fund on account of current service, the city shall make monthly contributions, for the purpose of making up said deficiencies in current service contributions, at a "current service deficiency rate" established by or pursuant to the provisions of this

(Prior code § 2904.88.)

3.24.920 Current service contributions - Rate.

From and after July 1, 1971, and until revised by the retirement board, the rate at which the city shall make contributions in each month for pensions and other benefits allowable under this retirement system to members on account of current service shall be 11.04 percent (said rate being the sum of a "normal city current service rate" of 10.30 percent, and a "city current service deficiency rate" of 0.74 percent) of the aggregate amount of members' compensation earned (or of members' compensation earnable with respect to members absent on military service, as defined in Section 3.24.1100, who are themsetves contributing pursuant to Section 3.24.1110, or for whom contributions are made by the city pursuant to Section 3.24.1150, or with respect to members absent by reason of service-connected injury or illness as defined in Section 3.24.1170 if such members are themselves contributing pursuant to Sections 3.24.1170 and 3.24.1180 on the basis of compensation earnable) during the immediately preceding calendar month. Said composite rate of eleven and four one hundredths percent, and/or the "normal city current service rate," and the "city current service deficiency rate" of which it is composed, may be revised by the retirement board from time to time because of or on the basis of such actuarial or other investigations as it may make pursuant to the provisions of Section 3.24.160 of this code, or because of or on the basis of experience in this system, or because of or on the basis of such tables and rates as the board may adopt in accordance with the provisions of Section 3.24.170 of this code. (Prior code § 2904.89a.)

3.24.930 Prior service contributions -Designated.

There shall be paid into the retirement fund, by contributions of the city, the amounta necessary to pay all pensions and all other benefits allowable under the retirement system to members on account of prior service, and not provided by member's accumulated prior service contributions. Until the amount accumulated in the retirement fund from contributions of the city made because of prior service becomes not less than the present value of all amounts thereafter payable from the retirement fund nn account of prior service and not provided by members' accumulated prior service contributions, the amount due in each fiscal year to said fund under this section shall be the amount determined from time to time by the retirement board, as required to liquidate the difference between said present value and the funds then on hand to meet such obligations on account of prior service, by annual installments from the time of such determination to a date forty years after the first day of July, 1951. Prorate installments may be paid for the fiscal years in which the forty years begin and end. During each fiscal year the board shall certify to the city auditor the amount due within such year to the retirement fund under this section on account of prior service, and the city auditor shall transfer such an amount to the retirement system from the budget appropriation for the then current fiscal year. (Prior code § 2904.89.)

3.24.940 Prior service contributions - Rate.

From and after July 1, 1971, and until revised by the retirement board, the rate at which the city shall make annual contributions for pensions and other benefits allowable under this retirement system to members on account of prior service shall be sixtyfour one-hundredths percent of the aggregate amount of members' compensation earned (or of members' compensation earnable with respect to members absent on military service, as defined in Section 3.24.1100 who are themselves contributing pursuant to Section 3.24.1110, or for whom contributions are made pursuant to Section 3.24.1150, or with respect to members absent by reason of service-connected injury or illness, as defined in Section 3.24.1170; if such members are themselves contributing pursuant to Sections 3.24.1170 and 3.24.1180 on the basis of compensation earnable) during the immediately preceding fiscal year. Said rate may be revised or changed by the retirement board from time to time

because of or on the basis of such actuarial or other investigations as it may make pursuant to Section 3.24.160 of this code, or because of or on the basis of experience in this system, or because of or on the basis of such tables and rates as the board may adopt in accordance with the provisions of Section 3.24.170 of this code.

(Prior code § 2904.89b.)

3.24.950 Contributions for members entitled to credit for service formerly credited to them uoder police and fire department retirement plan.

A. If a member, pursuant to Section 3.24.1080, elects to and becomes entitled to receive credit under this system for service formerly credited to him under a city police or fire department retirement plan specified in Section 3.24.1080, the city shall contribute to the retirement fund an amount equal to the sum of:

An amount which, when added to the sums transferred and paid into the retirement fund established by this chapter pursuant to Section 3.24.1080, will equal the amount of contributions which such member would have been required to pay under this system had he been a member of this aystem from the date he became a member of the police and fire department retirement plan;

An amount equal to the contributions which the city would have been required to make to the retirement fund, during the time said member was a member of the police and fire department retirement plan, if said member had then been a member of this system instead of said police and fire department

retirement plan.

Contributions required to be made by the city pursuant to this section shall be made by transfer and payment into the retirement fund established by this chapter, from the retirement fund established by said police and fire department retirement fund, of all contributions made by the city into such police or fire department retirement fund for or because of such person's membership in the police and fire retirement plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other avatlable city funds.

(Prior code § 2904.89c.)

3.24.960 Contributions for members entitled to credit under Section 3.24.1090 for service formerly credited to them under police and fire department retirement plan.

A. If a member, pursuant to Section 3.24.1090, elects to and becomes entitled to receive credit under this system for service formerly credited to him under a city police or fire department retirement plan specified in Section 3.24.1090, the city shall contribute to the retirement find a

amount equal to the sum of:

1. An amount equal to the contributions which the city would have been required to make to the retirement fund, during the time said member was a member of the police and fire department retirement plan, if said member had been a member of this system instead of said police and fire department retirement

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B. Contributions required to be made by the city pursuant to this section shall be made by the transfer and payment into the retirement fund established by this chapter from the retirement fund established by said police and fire department retirement plan, of all contributions made by the city into such police and fire department retirement fund for ur because of such person's membership in the police and fire department retirement plan. If the amount of moneys so transferred is less than the amount required to be contributed by the city under this section, the balance shall be paid from other available city funds.

(Prior code § 2904.89f.)

3.24,980 No credit to city upon withdrawol of member's accumulated contributions.

If the city service of a member is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the board to have resulted in permanent discontinuance (and in such case, as of the date of the determination by the hoard that the discontinuance is permanent), or if the disability retirement of a member is followed by cessation of the disability and by cancellation of the disability allowance, but the member does not reenter city service, and such member withdraws all or part of his accumulated contributions, and interest thereon, the city shall not receive a refund of its contributions made for such member nor receive a credit for such

contributions against other contributions required to be made by the city.
(Prior code § 2904.89(d); Ord. 20276.)

Part 11

SERVICE

Sections:

3.24.1000	Definitions.
3.24.1010	Exclusions from definition of city service.
3.24.1020	
3.24,1030	· ·
	generally.
3.24.1040	Computation - Certain time
	periods excluded.
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	Hours.
3.24.1060	Part-time service - Compensation
	earnable.
3.24,1070	Pnrt-time service - Credit for
	time worked.
3.24.1080	Service for which member was
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	palice and fire department
	retirement plan in Chapters 3.32 or 3.36.
3.24.1090	Service for which member was
	formerly entitled to credit under
	nolice and fire department

3,24,1000 Definitions.

Unless the context otherwise requires, the definitions set forth in the following subsections govern the construction of this chapter.

February 1, 1962.

retirement plan on or after

- A. "City service." Subject to such exclusions or exceptions as are provided for by subsection C of this section, or by other provisions of this Chapter 3.24, "city service," as used in this chapter means and includes:
 - Service rendered as an officer or employee of the city for the city, for compensation, and only while he is receiving compensation from the city therefor;
 - Military service if and to the extent that a member is entitled to credit therefor under and by virtue of other provisions of this chapter;

- 3. Service rendered as an employee of the former city of Willow Glen (which city was consolidated with the city of San José in 1936), for compensation, and only while he was receiving compensation from said former city of Willow Glen therefor; provided, however, that no person who has been retired prior to the first day of January, 1964, pursuant to the provisions of this chapter shall receive any increased retirement allowance by reason of such service, for any time that he was on retirement prior to said first day of January, 1964, but such increased retirement allowance, if payable for such reason, shall be payable only from and after the said first day of January, 1964.
- B. "Continuous service," as applied to "prior service," means all prior service regardless of interruptions and, as applied to "current service" means employment in city service uninterrupted by a continuous absence of more than three years. The period for which a member receives credit for service under Section 3.24.050 subsection 21 while absent on military service shall be excluded in calculating such continuous absence.
- "Current service" means all city service rendered by a member after June 30, 1951.
- Prior service" means all city service rendered by a member prior to July 1, 1951.
 (Prior code §§ 2904.91, 2904.92, 2904.93, 2904.94, 2904.95.)

3.24.1010 Exclusions from definition of city service.

"City service," as used in this Chapter 3.24 does not mean, and shall not be deemed to include, any of the following service:

- A. Service rendered as mayor or as a member of the city council;
- B. Service rendered as a member of any city board or commission unless the person rendering such service is otherwise employed by the city in an office or position which qualifies him for membership in this system and he is required by virtue of his said office or position to render such service as a member of a city board or commission;

- C. Service rendered while temporarily employed pursuant to the provisions of subparagraph (4) of subsection (a) of Section 1101 of the Charter of the city to make or conduct a special inquiry, investigation, examination or other installation, or to render professional, scientific or technical services of an occasional or exceptional character;
- D. Service rendered while employed pursuant to the provisions of subparagraph (5) of subsection 1101(a) of the Charter of the city, in the event of an emergency, to perform services required because of and during such emergency;
- E. Services rendered as a volunteer member of any police, fire or civil defense department, or of any police, fire or civil defense force or organization;
- F. Service rendered while employed, and service contracted for, pursuant to any transfer, consolidation or contract mentioned or referred to in Section 1109 of the Charter of the city;
- G. Service rendered while employed pursuant to Section 1110 of the Charter of the city;
- H. Service rendered while employed, and service paid for, on a part-time per diem, per hour or any basis other than a monthly basis, unless the person performing such service is a member of the system at the time he perform such service by virtue of the provisions of Section 3.24.480;

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- Service rendered while employed pursuant to any relief or anti-poverty program primarily for the purpose of giving relief or aid to such persons;
- J. Except as may be otherwise provided by Section 3.24.1080, service rendered by a person while he is a member of, or for which he receives or is entitled to credit under and by virtue of the provisions of, any police, fire or other retirement or pension system, other than this system or the federal social security system or any other federal retirement system, supported in whole or in part by the funds of the United States, any state government or political subdivision thereof, the city, or any other municipal corporation, if while a member thereof he received or was entitled to credit in such other system for such service.

(Prior code § 2904.92a.)

3.24.1020 Credit for prior service.

Credit for prior service shall be granted to each person who was a member or was receiving a retirement allowance on July 1, 1951, or who becomes a member thereafter and within three years after said date.

(Prior code § 2904.96.)

3.24.1030 Computation - Procedure generally.

The board shall credit one year for one thousand seven hundred thirty-nine hours of service rendered by any employee in any calendar year. Credit for more than one year of service shall not be allowed for service rendered in any calendar year. (Prior code § 2904.98.)

3.24.1040 Computation - Certain time perinds excluded.

Except as provided for absence on military service, time during which a member is absent from city service without compensation shall not be allowed in computing service.

(Prior code § 2904.97.)

3.24.1050 Computation - Part-time service - Hours.

For the purpose of calculating retirement services, credit for service for any member who works less than one thousand seven hundred thirty-nine hours in any calendar year shall be based on the ratio that the service rendered hears to one thousand seven hundred thirty-nine hours.

(Prior code § 2904.99.)

3.24.1060 Part-time service - Compensation earnable.

For the purpose of calculating retirement benefits based on part-time service, except under Sections 3.24.1480 and 3.24.1590, compensation earnable shall be taken as the compensation which would have been earnable if the employment had been on a full-time basis and the member had worked full-time. (Prior code § 2904.100.)

3.24.1070 Part-time service - Credit for time worked.

in determining qualification for retirement and calculating benefits payable upon death before retirement, a year of service shall be credited for each year during which the member was employed throughout the year on a part-time basis and was

engaged in his duties the full amount of time he was required by his employment to be so engaged. Credit for fractional years shall be granted to the extent of the fraction derived by dividing the time during which the member was engaged in his duties within the year, by the time he was required by his employment to be so engaged.

(Prior code § 2904.101.)

3.24.1080 Service for which member was formerly entitled to credit under police and fire department retirement plan in Chapters 3.32 or 3.36.

Subject to the following conditions, restrictions, limitations and other provisions, a member of this system who, immediately prior to becoming a member of this system, was a member of the police and fire department retirement plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this ende shall be entitled to credit under this system for service, if any, for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, if all of the following conditions exist and are satisfied:

- A. Such person must have been, immediately prior to becoming a member of this system, a member of the police and fire department plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this code; and
- B. Such person must have held, immediately prior to becoming a member of this system, a city office or position in the police or fire department of the city which qualified him for membership in, and because of which he was a member of the abovementioned police and fire department retirement plan; and
- C. The affice or position held by such person in the police or fire department of the city immediately prior to his becoming a member of this system must have been abolished or discontinued, and the functions and duties thereof, or substantially the same functions and duties, transferred to a city department or departments other than the police or fire departments; and
- D. Such person must have been transferred, at the time his office or position in the police or fire department was abolished or discontinued, to a new office or position in a city department other than the police or fire department, to perform substantially the same functions and duties as he performed in his former office or position; and

- E. Such persons abovementioned transfer must have taken place withmut any break in service rendered by such person, and withmut such person being required by the civil service regulations to take nr pass any civil service examination for the nffice or position to which he was transferred; and
- F. Such person's membership in the abovementioned police and fire department retirement plan must have ceased and terminated as nf the time of nr immediately prior to his said transfer to an office or position entitling him to membership in this system; and
- G. Such person must not have received or requested a return of any contributions paid or made by him to said police or fire department retirement plan, and must not have elected in continue making contributions to the police and fire department retirement plan pursuant to the provisions of Sections 3.32.010, 3.36.1620 or 3.36.1630; and
- H. Such person must have filed with the retirement board, on or before and no later than the thirtieth day immediately following the date as of which his position in the police or fire department is abolished or discontinued and he is transferred to an office or position entitling him to membership in this system, a written statement, in duplicate, duly signed by him, wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department plan at the time his membership therein was last terminated, and wherein he consents to and authorizes the transfer and payment into the retirement fund established by this Chapter 3.24 from the retirement fund established under the police and fire department retirement plan of all moneys contributed by him to the police and fire department retirement fund, together with interest thereon; and
- A copy of the statement specified in the immediately preceding subsection H shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and there shall have been transferred in the retirement fund established under this chapter, from the retirement fund established under the iast mentioned police and fire department fund, all moneys contributed by said person to the abovementioned police and fire department

retirement plan, together with interest thereon, moneys being an transferred being thereafter deemed to be normal contributions, or pring contributions where applicable, of said person to this retirement system for the service credited to him under this system.

(Prior code § 2904.92b.)

3.24.1090 Service for which member was formerly entitled to credit under police and fire department retirement pian on or after February 1, 1962.

Subject to the folinwing conditions, restrictions, limitations and other provisions, a member of this system who, prior to becoming a member of this system was on or after February 1, 1962, a member of the police and fire department retirement plan established or administered pursuant to Chapter 3.32 or Chapter 3.36 of this code, shall be entitled to credit under this system for service, if any, for which he was entitled in credit under said police and fire department retirement plan at the time his membership therein was last terminated, if all of the following conditions exist and are satisfied:

- A. Such person must have been, prior in becoming a member of this system, a member of the police and fire department retirement plan established or administered by or pursuant to Chapters 3.32 or 3.36 of this ende; and
- B. Such person must have held, print to becoming a member of this system, a city position in the police or fire department of the city which qualified him for membership in, and because of which he was a member of the abovementioned police and fire department retirement plan; and
- C. Such persm's membership in the abovementioned police and fire department retirement plan must have ceased and terminated print to his becoming a member of this system; and
- D. Such person must not have elected to continue making contributions to the police and fire department retirement plan, pursuant to the provisions of Sections 3.36.1620 or 3.36.1630; and
- Such person must have filed with the retirement board;
 - On nr before and nn later than the thirtieth day immediately fullowing the date on which there is deposited in the U.S. Mail addressed to him at his last place of residence as shown on the city's records, a written untice of his right to so elect, or

- On or before and no later than the thirtieth day immediately following the date as of which he becomes a member of this system, whichever is the later date, a written statement, in duplicate, duly signed by him, wherein he elects to receive credit under this system for service for which he was entitled to credit under said police and fire department retirement plan at the time his membership therein was last terminated, and wherein he agrees to pay into the retirement fund established by this chapter an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system equal to the amount they would be if he had been a member of this system, in the position to which he was appointed and because of which he became a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to get credit, and if the contributions payable to this system under such circumstances had been deducted from his compensation and paid into the retirement fund pursuant to this system during all of such time. Payment of such amount may be made by such person from any source or sources available to him including, but not limited to, transfer of moneys contributed by him to the police and fire department retirement fund, together with interest thereon, from the police and fire department retirement fund into the retirement fund established by this chapter;
- F. A copy of the statement specified in the immediately preceding subsection E shall have been transmitted by the retirement board to the board which is charged with the duty of administering the abovementioned police and fire department retirement plan of which said person was formerly a member; and said person shall have paid into the retirement fund established under this chapter:
 - On or before and no later than the thirtieth day immediately following the date on which he files with the retirement board, within the time prescribed in subsection B 1 of this section therefor, his written election to receive the above-described credit in the retirement fund; or

On or before and no later than the thirtieth day immediately following the date as of which he is appointed to a position entitling him to membership in this system, whichever is the later date, an amount of money sufficient to make the accumulated contributions standing to the credit of his individual account in this system equal to the amount they would be if he had been a member of this system, in the position to which he was appointed and because of which he became a member of this system, during the time he was rendering the previous service in the police or fire department for which he seeks to get credit, and if the contributions payable to this system under such circumstances had been deducted from his compensation and paid into the retirement fund pursuant to this system during all of such time.

(Prior code § 2904.92c.)

Part 12

ABSENCES

Sections:

3.24.1100	Absences on military service -
	Described.
3.24.1110	Member absent on military
	service - Contributions.
3.24.1120	Member absent on military
	service - Credit for absence.
3.24.1130	Member absent on military
	service - Entitled to accumulated
	contributions wheu.
3.24.1140	Member absent on military
	service - City shall contribute if
	absent member contributes.
3.24.1150	Member absent on military
	service - City contributions -
	Basis.
3.24.1160	Member absent on military
	service - City contributions -
	Payment and availability.
3.24.1170	Absence due to service-connected

injury or illness - Effect on

benefits.

3.24.1180 Absence due to service-connected injury or illness - Contributions.

3.24.1100 Absences on military service - Described.

A member is absent on military service when he is absent from city service by reason of service with the armed forces or the Merchant Marine of the United States, or on ships operated by or for the United States Government, either during a war involving the United States as a belligerent or in any other national emergency or in time of peace if he is drafted for such service by the United States Government, and for six months thereafter. (Prior code § 2904.102.)

3.24.1110 Member absent on military service - Contributions.

Any member so absent who does not qualify to have his contributions made by the city under Section 3.24.1150 may contribute to this system, either during his absence on military service or upon his return to city service, at times and in the manner prescribed by the board, amounts equal to the contributions which would have been made by him to the system on the basis of his compensation earnable at the commencement of his absence if he had remained in city service. When made, such contributions are cormal contributions.

(Prior code § 2904.103.)

3.24,1120 Member absent on military service - Credit for absence.

If he does so contribute, he shall receive credit for the absence as city service in the same manner as if he had not been absent from city service. If he does not contribute, he shall receive credit for the absence as city service solely for the purpose of qualifications for retirement and death benefits.

(Prior code § 2904.104.)

3.24.1130 Member absent on military service - Entitled to accumulated contributions when.

Any member absent on military service or absent from eity service by reason of having been ordered by an authorized official of this state or the United States to duties outside city service shall be paid his accumulated contributions upon his request. Such payment terminates any election by such member to contribute.

(Prior code § 2904.105.)

3.24.1140 Member absent on military service City shall contribute if absent member contributes.

Whenever a member elects to continue and continues such contributions, the same contributions shall be made by the city in respect to such absence that would have been made if the member had not been absent on military service.

(Prior code § 2904.106.)

3.24.1150 Member absent on military service - City contributions - Basis.

Notwithstanding the provisions of the preceding sections of this part, the city shall contribute for each member of this system, who is absent without compensation from city service on military service or on ships operated by or for the United States Government (not including service in the Merchant Marine), and who returns to city service within six months after discharge under conditions other than dishonorable, or within six months after any period of rehabilitation afforded by the United States Government including a period of rehabilitation for purely educational purposes, amounts equal to the contributions which would have been made by the employee and the city to the system on the basis of his compensation earnable at the commencement of his absence, plus the annual salary adjustments which he would have received if he had not been so absent. For the purpose of this section, the member absent on military service shall be deemed to have received a service rating for the period of such absence entitling him to annual salary adjustments. For the purpose of this section, a member who is or was granted a leave of absence or placed on a city civil service reemployment list as of the same date he was reinstated from military leave shall be considered as having returned to city service within said six months, if he returns to city service at the end of such leave of absence or upon offer of employment from the reemployment list, or if he retires under this system for service or disability during such leave. (Prior code § 2904.107.)

3.24.1160 Member absent on military service City contributions - Payment and availability.

The contributions required of the city pursuant to Section 3.24.1150 may be made in one sum, or in the manner in which other contributions are made. Contributions pursuant to Section 3.24.1150 shall be available only for the purpose of benefits payable in event of death or retirement for service or disability

and shall be made available only for the purpose of benefits payable in event of death or retirement, and an employee resigning from city service after reinstatement from military service shall be entitled to withdraw under Sections 3.24.510, 3.24.620 or 3.24.640 only that portion of his accumulated contributions persanally made by him. (Prior code § 2904.108.)

3.24.1170 Absence due to service-connected injury or illness - Effect on benefits.

Time during which a member is absent from city service by reason of injury or illness determined within one year after the end of such absence to have arisen nut of and in the course of his employment shall be considered as spent in city service for the purpose of qualification for retirement and death benefits, but not for calculation of retirement benefits unless he contributes as provided in Section 3.24.1180 and except as he receives compensation as distinguished from disability indemnity under the Labor Code, during the absence, and then only to the extent of compensation received. (Prior code § 2904.109.)

3.24.1180 Absence due to service-connected injury or illness - Contributions.

Any member so absent by reason of such service-connected injury or illness may contribute to this system during his absence or upon his return to city service at times and in the manner prescribed by the board auch amounts as may be necessary, when added to contributions deducted from compensation as distinguished from disability indemnity received by him during his absence, to contributions he would have made had he not been absent. If he does so contribute, he shall receive credit for all of the absence as city service.

(Prior code § 2904.109a.)

Part 13

RETIREMENT

Sections:

3.24.1200 Retirement for service Conditions.
3.24.1210 Retirement at age of seventy.

3.24.1220 Retirement for disability -Designated. 3.24.1230 Retirement far disability -Canditians. 3.24.1240 Retirement for disability -Application - Whn may make. 3.24.1250 Retirement for disability -Application - Conditions. 3.24.1260 Retirement for disability - Baard may require medical examination. 3.24.1270 Retirement far disability -Determination of disability. 3.24.1280 Retirement for disability -Pension may be discontinued when. 3.24.1290 Disability retirement allowance -Cancelled when - Reinstatement, 3.24,1300 Disability retirement allowance -Reentry of recipient into federated city service. 3.24.1310 Disability restrement allowance -When recipient daes not reenter city service. 3.24.1320 Reinstatement from service retirement. 3.24.1330 Retired employee may not be employed by city unless first reinstated.

3.24.1200 Retirement for service - Conditions.

A member shall be retired for service upon his written application to the buard if:

A. He has attained age fifty-five and is entitled to be credited with at least twenty years of continuous service: or

B. The following conditions exist:

- He is separated from city service because of a curtailment of or a change in the manner of performing such service, and not because of resignation or dismissal under charges;
- He has attained age fifty and is entitled to be credited with fifteen or more years of city service:
- The buard determines that his separation is
 of an extended and uncertain duration, and
 not the separation normally experienced by
 members in positions known at the time of
 employment to be of limited duration or an
 a seasonal or intermittent basis.

(Prior code § 2904.110.)

3.24.1210 Retirement at age of seventy.

Every member shall be retired on the first day of the calendar month next succeeding that in which he attains age seventy. Every member who on July 1, 1951, has attained age seventy shall be retired forthwith.

(Prior code § 2904.111.) ..

3.24.1220 Retirement for disability - Designated.

As used in this chapter, "disability" and "incapacity for performance of duty" as a basis of retirement, means disability of permanent or extended and uncertain duration, as determined by the board on the basis of competent medical opinion. (Prior code § 2904.112.)

3.24.1230 Retirement for disability - Conditions.

Any member incapacitated for the performance of duty shall be retired for disability pursuant to these sections if he is entitled to be credited with ten years of city service, regardless of age. (Prior code § 2904.113.)

3.24.1240 Retirement for disability Application - Who may make,

Application to the board for retirement of a member for disability may be made by:

- The head of the office or department in which the member is or was last employed;
- B. The city manager;
- C. The member, or any person in his behalf who is legally authorized to act for him. (Prior code § 2904.114.)

3.24.1250 Retirement for disability - Application - Conditions.

The application shall be made only while the member is in city service, within four months after his discontinuance of city service, or while he is physically or mentally incapacitated to perform his duties from the date of discontinuance of city service to the time of application or motion. On receipt of an application, the board shall, or of its own motion it may, order a medical examination of a member who is otherwise eligible to retire for disability to determine whether he is incapacitated for the performance of duty.

(Prior code § 2904.115.)

3.24.1260 Retirement for disability - Board may require medical examination.

The board may require any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service to undergo medical examination, and upon his application for reinstatement, shall cause a medical examination to be made of any such recipient who is at least six months less than the age of seventy. Such examination shall be made by a physician or surgeon, appointed by the board, at the place of residence of the recipient or other place mutually agreed upon. Upon the basis of such examination, he board shall determine whether he is still incapacitated, physically or mentally, for service in a position of the same class as the position held by him when retired for disability, or for other duties proposed to be assigned to him. (Prior code § 2904.117.)

3.24.1270 Retirement for disability - Determination of disability.

If the medical examination and other available information show to the satisfaction of the board that the member is incapacitated physically or mentally for the performance of his duties in the city service and is eligible to retire for disability, the board shall forthwith retire him for disability.

(Prior code § 2904.116.)

3.24.1280 Retirement for disability - Pension may be discontinued when.

If any recipient of a disability retirement allowance under the minimum age for voluntary retirement for service applicable to members of his class refuses to submit to medical examination, the pension portions of his allowance may be discontinued until his withdrawal of such refusal. If such refusal continues for one year, his disability retirement allowance may be canceled. (Prior code § 2904.120.)

3.24.1290 Disability retirement allowance - Cancelled when - Reinstatement.

If the board determines that such recipient is not so incapacitated, his disability retirement allowance shall be cancelled forthwith. He shall then be reinstated, at his option, to the position held by him when retired for disability or to a position in the same classification with duties within his capacity. (Prior code § 2904.118.)

3.24.1300 Disability retirement allowance - Reentry of recipient into federated city service.

If the recipient of a disability retirement allowance is reemployed in federated city service, as federated city service is defined in Chapter 3.28 of this title, and thus becomes eligible for membership in the retirement system established by said Chapter 3.28, his disability retirement allowance shall be canceled as of the time he enters said federated city service and he shall thereafter be governed by the provisions of said Chapter 3.28. (Prior code § 2904.121.)

3.24.1310 Disability retirement allowance When recipient does not reenter city service.

If the retirement allowance of any person retired for disability is canceled for any cause other than reentrance into city service, and if he does not reenter city service, an account which is the actuarial equivalent of his annuity at cancellation, based on a disabled life, but not exceeding the amount of his accumulated contributions at the time of his retirement for disability shall be credited to his individual account, and shall be refunded to him unless he elects, under Section 3.24.510, to allow his accumulated contributions to remain in the retirement fund. (Prior code § 2904.122.)

3.24.1320 Reinstatement from service retirement.

A person who has been retired for service under this system may be reinstated from retirement to the federated city service pursuant to the provisions of Section 3.28.410 of this code. Upon such reinstatement the service retirement allowance theretofore payable to him under this system shall be canceled.

(Prior code § 2904.123.)

3.24.1330 Retired employee may not be employed by city unless first reinstated.

A person who has been retired under this system for service or for disability shall not be employed thereafter by the city unless he has first been reinstated from retirement pursuant to this chapter. The provisions of Section 3.24.1430 apply to any person employed in violation of this section. (Prior code § 2904.126.)

Part 14

BENEFITS

3.24.1350 Method of payment.

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012 111300	monda or paymone.
3.24.1355	Benefit limitations.
3.24.1360	Rights and benefits unassignable.
3.24.1370	Benefits shall not be modified.
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3.24.1410	Designation of beneficiary not
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	break in membership.
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	rights and benefits -Assignments
	to city.
3.24.1430	Persons entitled to retirement
	allowance - Certain compensation
	prohibited.

3.24.1350 Method of payment.

A pension, an annuity or a retirement allowance granted by this chapter is payable in equal monthly installments, but a smaller pro rata amount may be paid for part of a month when the period of payment begins after the first or ends before the last day of the month.

(Prior code § 2904.127.)

3.24.1355 Benefit limitations.

- A. Notwithstanding any other law, the benefits payable to any person who becomes a member of this system on or after January 1, 1990, shall be subject to the limitations set forth in Section 415 of the Internal Revenue Code as applied (other than paragraph (2)(G)) without regard to paragraph (2)(F) of said Section 415.
- B. Notwithstanding any other law, the benefits payable to any person who became a member of this system prior to January 1, 1990, shall be subject to the greater of the following limitations as provided in Section 415(b)(10) of the Internal Revenue Code:
 - The limitations set forth in Section 415 of the Internal Revenue Code; or

- The accrued benefit of the member without regard to any benefit increases pursuant to any amendment of this system adopted after October 14, 1987.
- C. For purposes of the application of Section 415(b) of the Internal Revenue Code, actuarial equivalences shall be based on a five percent interest rate and the 1983 Group Annuity Table for Males with a two-year sctback.

(Ord. 23283.)

3.24.1360 Rights and benefits unassignable.

The right of a person to any benefit or other right under this chapter and the money in the retirement fund are unassignable except as specifically provided in this chapter.

(Prior code § 2904.128.)

3.24.1370 Benefits shall not be modified.

The benefits payable under this system shall not he modified on account of any amounts paid to a retired member or beneficiary, as defined in Part 1 of this chapter, under Division 4 of the Labor Code. (Prior code § 2904.129.)

3.24.1380 Qualified members may not be deprived of retirement rights.

Subject to compliance with this chapter, after a member has qualified as to service and disability for retirement for disability, or as to age and service for retirement for service, nothing shall deprive him of the right to a retirement allowance as determined under this chapter.

(Prior code § 2904.130.)

3.24.1390 Beneficiary - Designation requirements.

- A. A member may at any time designate, by a writing filed with the board, a beneficiary to receive such benefits as may be payable to his beneficiary or estate under this chapter; provided, however, that a member may not designate a corporation to receive a benefit payable under Section 3.24.1930, Section 3.24.1940, or Section 3.24.1950 of Part 19 of this chapter.
- B. Except as hereinafter otherwise provided, the designation of beneficiary may be by class, subject to such conditions as may be imposed by board rule, in which case such members of the class as are in being at the time of the member's death shall be emitted as beneficiaries. The

- designation of a beneficiary under any of the optional settlements authorized by Part 19 of this chapter, Sections 3.24.1900 through 3.24.1950 inclusive, may not be by class.
- C. The right of any person designated as a beneficiary by a member to any benefits hereunder shall also be subject to the board's conclusive determination, upon evidence satisfactory to it, of the existence, identity or other facts relating to entitlement of such person so designated as beneficiary, and payment made by the system in reliance on any such determination imade in good faith, notwithstanding that it may not have discovered a heneficiary otherwise entitled to share in the benefit, shall constitute a complete discharge and release of the system from further liability for the benefit.

(Prior code § 2904, 131.)

3.24.1400 Beneficiary - Changes permitted when.

The designation of a beneficiary under this system, other than designations under optional settlements two, three and four, may be revoked at the pleasure of the person who made it and a different beneficiary designated by a writing filed with the board.

(Prior code § 2904.132.)

3.24.1410 Designation of beneficiary not affected by termination of nr break in membership.

The designation of a beneficiary by a member is not affected by termination of nor a break in his memberahip.

(Prior code § 2904.133.)

3.24.1420 Release or relinquishment of rights and benefits - Assignments to city.

A. Anything elsewhere in this Part 14, or in this Chapter 3.24, or elsewhere in this code to the contrary notwithstanding, any right, title or interest which any member of this retirement system or any other person or persons may have or may claim to have in or to any retirement or other allowance or in or to any benefit or benefits whatsoever, or in or to any moneys whatsoever, or any other right, title or interest which any person or persons may have or claim to have, under or by virtue of the provisions of this

retirement system, whether such right, title or interest is vested, contingent or otherwise, may be released, relinquished and given up by such member or by such other person or persons, or may be assigned to the city or to the retirement system or retirement board by such member or other person or persons; and, upon such being done, the right, title or interest which is so released, relinquished, given up or assigned is and shall be deemed extinguished, the same as if such right, title or interest has never existed, and neither the city nor this retirement system or retirement board shall thereafter have any liability whatsoever with respect to the right, title or interest so released, extinguished or given up.

B. If and to the extent that the city pays or gives any consideration, other than funds of this retirement system, for any above-mentioned release, relinquishment, giving up or assignment, the amount or value of the consideration paid or given by the city for said release, relinquishment, giving up or assignment, or the actuarial value of the right, title or interest which is so released, relinquished, given up or assigned, as of the date of such release, relinquishment, giving up or assignment, whichever is the lesser amount, shall be credited against and deducted from the amount of current service contributions which the city is required to pay into the retirement fund during the following calendar months until full credit therefor is thus received by the city.

(Prior code § 2904, I33a.)

3.24,1430 Persons entitled to retirement allowance - Certain compensation prohibited.

Compensation other than that for services as an independent contractor is forbidden one entitled to retirement allowance. (Prior code § 2904.32.)

Part 15

SERVICE RETIREMENT GENERALLY

Sections:

3.24.1450	Limited applicability of Part 15.
3.24.1460	Service retirement allowance.
3.24.1470	Service retirement animity.

3.24.1480 Retirement allowance.

3.24.1490 Current service pension - Described - Table.

3.24.1500 Current service pension - Reinstated members.

3.24.1510 Prior service pension - Described.

3.24.1520 Prior service pension - Derivation.

3.24.1530 Prior service pension - Computation.

3.24.1450 Limited applicability of Part 15.

On and after the effective date of this section, the provisions of this Part 15 shall no longer apply to any person to whom the provisions of Part 16 of this chapter thereafter apply. (Prior code § 2904.140a.)

3.24.1460 Service retirement allowance.

Upon retirement for service, a member is entitled to receive a service retirement allowance which shall consist of:

A. His service retirement annuity;

B. His current service pension;

C. His prior service pension. (Prior code § 2904.134.)

3.24.1470 Service retirement aunuity.

The service retirement annuity is the sum of the annuities which are the actuarial equivalents of the normal prior service and additional accumulated contributions of a member at the time of his retirement.

(Prior code § 2904.135.)

3.24.1480 Retirement allowance.

The retirement allowance referred to in this part excludes that portion of a member's service retirement annuity that was purchased by his accumulated additional contributions. If a member enters this system with credit for prior service, and retires after attaining age seventy, or if a member is entitled to be credited with twenty years of continuous city service and retires after attaining age sixty-five, and his retirement allowance is less than one-half of his final compensation and less than seven hundred twenty dollars per year, his prior or current service pension, as the case may be, shall be increased so as to cause his retirement allowance to amount to one-half of such final compensation, or seven hundred twenty dollars per year, whichever is less. (Prior code § 2904.138.)

3.24.1490 Current service pension - Described - Table.

A. The current service pension for a member is a pension derived from the contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated normal contributions of the member at the date of his retirement, to equal the fraction of one-sixtieth of his final compensation set forth opposite his age at retirement, taken to the preceding completed quarter year, in the following table in the column applicable to his sex, multiplied by the number of years of current service with which he is entitled to be credited at retirement;

Age of	Fraction	
Retirement	Men	Women
55	.7279859	.7454885
55 - 1/4	.7393043	.7561871
55 - 1/2	.7506227	.7668857
55 - 3/4	.7619411	.7775843
56	.7732594	.7882828
56 - 1/4	.7855785	. 7998706
56 - 1/2	.7978975	.8114584
56 - 3/4	.8102166	.8230462
57	.8225356	.8346340
57 - 1/4	.8360043	.8472396
57 - 1/2	.8494729	.8598451
57 - 3/4	.8629416	.8724507
58	.8764102	.8850562
58 - 1/4	.8911573	.8987803
58 - 1/2	.9059044	.9125043
58 - 3/4	.9206515	.9262283

Age of	Fraction		
Retirement	Men	Women	
59	.9353986	.9399523	
59 - 1/4	.9515490	.9549643	
59 - 1/2	.9676993	.9699762	
59 - 3/4	.9838497	.9849881	
60	1,0000000	1.0000000	
60 - 1/4	1.0110756	1.0111938	
60 - 1/2	1.0221511.	1.0223875	
60 - 3/4	1:0332267	1.0335813	
61	1.0443022	1.0447750	
61 - 1/4	1.0591095	1.0597869	
61 - 1/2	1,0739167	1.0747987	
61 - 3/4	1.0887240	1.0898106	
62	1,1035312	1.1048224	
62 - 1/4	1.1191698	1.1207671	
62 - 1/2	1.1348083	1.1367118	
62 - 3/4	1.1504469	1.1526565	
63	1.1660854	1.1686012	
63 - 1/4	1.1826342	1.1855895	
63 - 1/2	1.1991829	1.2025777	
63 - 3/4	1.2157317	1.2195660	
64	1.2322804	1.2365542	
64 - 1/4	1.2498384	1.2547498	
64 - 1/2	1,2673963	1.2729454	
64 - 3/4	1.2849542	1,2911410	
65 and over	1.3025121	1.3093365	

B. The fractions herein set forth at ages other than age sixty are based on the interest rate and mortality tables used under the San José federated employee's retirement system with respect to members on July 1, 1951, and shall be adjusted by the board in accordance with such interest and mortality tables as the board may adopt with respect to such members. Fractions required for ages below fifty-five, because of retirement for service under subsection B of Section 3.24.1000, shall be determined by the board according to the interest rate and mortality tables then being used by the system.

(Prior code § 2904.136.)

3.24.1500 Current service pension - Reinstated members.

- A. The current service pension of any member reinstated from service retirement, upon his service retirement subsequent to such reinstatement, shall be the sum of:
 - A current service pension calculated on the basis of service rendered after such reinstatement and in accordance with Section 3.24.1490; plus
 - 2. His current service pension as it was prior to his reinstatement, adjusted according to any change in the provisions governing the calculation of such pensions, made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this system; or if he has rendered one year or more of city service after reinstatement, in lieu of subsection 2; pius
 - A current service pension based on current service rendered prior to such reinstatement, but calculated under Section 3.24.1490:
 - a. On the basis of an age, taken to the preceding completed quarter year but nnt less than fifty-five years, and determined by deducting from his age at his subsequent retirement, the aggregate time during which he was under retirement, and
 - b. On the basis of his final compensation as it was at the date of his preceding retirement.

B. For such a member reinstated from disability retirement, the current service disability retirement, the current service pension upon his service retirement after attaining age fifty-nine, or upon his disability retirement after attaining age sixty, and subsequent to such reinstatement, shall be calculated in the manner described in the preceding sentence, but the age determined upon subsequent retirement after rendering at least one year of city service shall not be taken at less than fifty-nine years if the subsequent retirement is for service, or sixty years if such retirement is for disability.

(Prior code § 2904.136a.)

3.24.1510 Prior service pensiou - Described.

The prior service pension for a member, is an annual pension derived from the contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contributions of the member at the date of his retirement, to equal the fraction of one-sixtieth of his final compensation set forth opposite his age at retirement, taken to the preceding completed quarter year, in the table which appears in Section 3.24.1490, and in the column applicable to his sex, multiplied by the number of years of prior service with which he is entitled to be credited at retirement. (Prior code § 2904.137.)

3.24.1520 Prior service pension - Derlyation.

The portion of prior service pensions which is not provided by members' prior service accumulated contributions is derived from contributions of the city. (Prior code § 2904.139.)

3.24.1530 Prior service pension - Computation.

A. The prior service pension of any member reinstated from service retirement, upon his subsequent service retirement, shall be in the same amount as his prior service pension prior to his reinstatement, adjusted according to any change in the provisions governing the calculation of such pensions made after such reinstatement and applicable to pensions being paid at the date of the change; provided, that such subsequent retirement occurs before he renders after his reinstatement at least one year of city service credited under this system; otherwise the prior service pension calculated:

- On the basis of an age, taken to the preceding completed quarter year but not less than fifty-five years, and determined by deducting from his age at his subsequent retirement, the aggregate time during which he was under retirement; and
- If final compensation entered into the calculation of his prior service pension before his reinstatement, on the basis of his final compensation as it 3.24.1640 was at the date of his preceding retirement.
- B. For such a member reinstated from disability retirement, the prior service pension upon his service retirement after attaining age fifty-nine, or upon his disability retirement after attaining age sixty and subsequent to such reinstatement, shall be calculated in the manner described in the preceding sentence, but the age, determined upon subsequent retirement after rendering at least one year of city service, shall not be taken at less than fifty-nine years if the subsequent retirement is for service, or sixty years if such retirement is for disability.

(Prior code § 2904.140.)

Part 16

SERVICE RETIREMENT FOR CERTAIN MEMBERS ON AND AFTER EFFECTIVE DATE

3.24.1560 Option for persons who became

3.24.1550 Applicability of Part 16.

Sections:

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3.24.1570	Option - Time limit and
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3.24.1580	Service retirement allowance
	Composition.
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•	memhers formerly reinstated
	from service retirement.
3.24.1680	Prior service pension - For
	members formerly reinstated
	from disability retirement.

3.24.1550 Applicability of Part 16.

- A. The provisions of this Part 16 shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system and to service retirement benefits payable to them after the effective date of this Part 16, as follows:
 - All persons who became members of this retirement system on or after the effective date of this part, excepting persons who on the effective date of this part are on service retirement or disability retirement under this retirement system who may subsequently be reinstated from such retirement;
 - 2. Each person who became a member of the retirement system prior to the effective date of this part if he is a member of such system on said effective date and if, in addition, he is given the option hereinafter specified in Section 3.24.1560 and exercises such option in the manner and within the time specified in Section 3.24.1570 of this chapter.
- B. Any person who became a member of the retirement system prior to the effective date of this Part 16 shall not be governed by any of the provisions of this part and shall not be entitled to any of the benefits provided for or specified in this part if he is not a member of the retirement system on the effective date of this part, or if he is not given the option hereinafter specified in Section 3.24.1560, or if he is given such option but refuses or fails to exercise such option in the manner and within the time specified in Section

3.24, 1570; but any such person shall continue to be governed by the provisions of Part 15 of this chapter.

(Prior code § 2904.140h.)

3.24.1560 Option for persons who became members prior to effective date of Part 16

- A. Each member of this retirement system who became such prior to the effective date of this Part 16 shall have and is hereby given, if and unly if he is a member on the effective date of this part, an option of being governed by the provisions of this Part 16 and of being entitled to such rights and benefits as are provided for in this part, subject to the conditions, limitations, restrictions and requirements mentioned or referred to in this part or elsewhere in this chapter, in lieu of being governed by the provisions of Part 15 and in lieu of being entitled to any of the rights or benefits provided for in Part 15. Such option is not given to any person who on the effective date of this part is on service retirement or disability retirement.
- B. No such member to whom such option is given shall be governed by the provisions of this Part 16, nor be entitled to any of the rights or benefits provided for in this part, unless he exercises such option within the time specified in Section 3.24.1570, and no later, in the manner specified in said Section 3.24.1570.
- C. Each such member who exercises said option within the time and in the manner specified in said Section 3.24.1570 shall, on and after the effective date of this Part 16, be governed by the provisions of this part, and be entitled to the rights and benefits provided for in this part, subject to the abovernentioned conditions, limitations, restrictions and requirements, in lieu of being governed by the provisions of Part 15, and in lieu of any rights or benefits provided for in Part 15 of this chapter.

(Prior code § 2904, 140i.)

3.24.1570 Option - Time limit and procedures required.

Each such member who is given the option hereinabove specified in Section 3.24.1560 must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement, on a form to be furnished

to him on his request by said secretary, declaring that he elects to exercise such option. The statement shall be filed as aforesaid on or before, and no later than, the ninetieth day immediately following the effective date of this Part 16, excepting, however, that any such member who on the effective date of this part is on temporary leave from city service because of active service in the armed forces of the United States may file the statement exercising such option with the secretary on or before, and no later than, the ninetieth day immediately following the date of expiration of his said leave or his return to duty, whichever is earlier. Upon filing of said written statement with the secretary in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his said option, effective from and after the effective date of this Part 16. (Prior code § 2904.140j.)

3.24.1580 Service retirement allowance - Composition.

Upon retirement for service, a member to whom the provisions of this Part 16 apply shall be entitled to receive a service retirement allowance which shall consist of:

- A. His service retirement annuities:
- B. His current service pension:
- C. His prior service pension. (Prior code § 2904.140k.)

3.24.1590 Retirement allowance - Computation.

The retirement allowance referred to in this section excludes that portion of a member's service retirement annuity that was purchased by his accumulated additional contributions. If a member enters this system with credit for prior service and retires for service after attaining age seventy, or if a member is entitled to be credited with twenty years of continuous city service and retires from service after attaining age sixty-five, and his service retirement allowance is less than one-half of his final compensation and less than seven hundred twenty dollars per year, his prior or current service pension, as the case may be, shall be increased so as to cause his retirement allowance to amount to one-half of such final compensation or seven hundred twenty dollars per year, whichever is less. (Prior code § 2904.140q.)

3.24.1600 Service retirement allowance - Maximum amount.

Anything elsewhere to the contrary notwithstanding, the service retirement allowance of a member to whom the provisions of this Part 16 apply shall never exceed an amount equal to eightyfive percent of such member's final compensation. As used in this section, "service retirement allowance" means the sum of "his service retirement annuity," "his current service pension" and "his prior service pension" referred to in Section 3.24.1580 of this part, excluding, however, such portion of "his service retirement annuity" as is the actuarial equivalent of accumulated additional contributions made by a member pursuant to the provisions of Section 3.24,740.

(Prior code § 2904.140z.)

3.24.1610 Service retirement annuity.

The service retirement annuity of a member who is governed by the provisions of this Part 16 is the sum of the annuities which are the actuarial equivalents of the normal prior service and the additional accumulated contributions of a member at the time of his retirement.

(Prior code § 2904.1401.)

3.24.1620 Current service pension - Described - Table.

A. Subject to other provisions of this chapter, the current service pension for a member governed by the provisions of this part is a pension derived from contributions of the city sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contribution and the accumulated normal contributions of the member at the date of his retirement, and when also added to the prior service pension of such member, to equal the following: Two percent of his final compensation for each of the first twenty-five years of service (including both prior service and current service) for which such member is entitled to credit at the time of his retirement, plus one percent of his final compensation for each year of such member's service (including both prior service and current service) in excess of twenty-five years, multiplied by the retirement age factor in the second column of the following retirement age factor table opposite his age at time of retirement, taken to the preceding completed quarter year:

Retirement Age Factor Table

Age at Retirement	Retirement Factor
55	1,000
55-1/4	1,005
55-1/2	1,010
55-3/4	1,015
56	1,020
56-1/4	1,025
56-1/2	1,030
56-3/4	1,035
57	1,040
57-1/4	1,045
57-1/2	1,050
57-3/4	1,055
58	1,060
58-1/4	1,065
58-1/2	1,070
58-3/4	1,075
5 9	1,080
59-1/4	1,085
59-1/2	1,090
59-3/4	1,095
6 0	1,100
60-1/4	1,110
60-1/2	1,120
60-3/4	1,130
61	1,140
61-1/4	1,150
61-1/2	1,160
61-3/4	1,170
62	- 1,180
62-1/4	1,190
62-1/2	1,200
62-3/4	1,210
63	1,220
63-1/4	1,230
63-1/2	1,240
63-3/4	1,250
64	1,260
64-1/4	1,270
64-1/4	1,280
64-1/4	1,290
65 and over	1,300

B. Fractions required for ages below fifty-five because of retirement for service under subsection B of Section 3.24.1200, shall be determined by the board.

(Prior code § 2904.140m.)

3.24.1630 Current service pension - For members formerly reinstated from service retirement.

- A. If a member who is governed by the provisions of this Part 16 shmuld retire for service pursuant to the provisions of this retirement system after the effective date of this part, and if, subsequent to being so retired for service he is reinstated to service, and if after such reinstatement to service he again retires for service hereunder, his current service pension, upon his latest retirement for service, shall be as follows:
 - If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his current service pension shall be the sum of:
 - a. A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of service rendered after such reinstatement; plus
 - b. His current service pension as it was prior to said reinstatement, adjusted in accordance with any change in the provisions governing the calculation of his current service pension, made after said reinstatement, which would have applied to him had he continued in retirement.
 - 2. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his "current service pension" shall be the sum of:
 - A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of service rendered after such reinstatement; plus

- A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:
 - Current service rendered prior to said reinstatement,
- ii. His age at time of his latest service retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his latest retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he was on retirement, and
- iii. His final compensation as it was on the date of his first service retirement.
 (Prior code § 2904.140n.)

3.24.1640 Current service pension - For members formerly reinstated from disability retirement.

If a member who is governed by the provisions of this Part 16 should retire for disability pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for disability he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his current service pension, upon his latest retirement for service, shall be as follows:

- A. If such member's latest service retirement occurs before such member renders at least one year of city aervice for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his current service pension shall be the sum of:
 - A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of current service rendered after such reinstatement; plus
 - A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:
 - a. Current service rendered prior to his preceding disability retirement,
 - b. His age at the time he was retired for disability, and
 - e. His final compensation as it was on the date he was retired for disability.

- B. If such members latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding disability retirement, then in that event his current service pension shall be the sum of:
 - A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of current service rendered after such reinstatement, plus:
 - A current service pension calculated in accordance with the provisions of Section 3.24.1620 on the basis of:
 - a. Current service rendered prior to his preceding disability retirement,
 - b. His age at the time of his latest service retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his latest retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he was on retirement, and
 - His final compensation as it was on the date he was retired for disability.

(Prior code § 2904,140o.)

3.24.1650 Prior service pension - Computation.

Subject to other provisions of this chapter, the prior service pension far a member governed by the provisions of this Part 16 is an annual pension derived from contributions of the city, sufficient, when added to the service retirement annuity that is derived from the accumulated prior service contributions of the member at the date of his retirement to equal the following: Two percent of his final compensation for each of the first twenty-five years of prior service for which such member is entitled to credit at the time of his retirement, plus one percent of his final compensation for each year at his prior service in excess of his first twenty-five years of such service, multiplied by the retirement age factor specified opposite his age at time of retirement, taken to the preceding quarter year, in the second column of the retirement age factor table which is set forth in Section 3,24,1620.

(Prior code § 2904.140p.)

3.24.1660 Prior service pension - Derivation.

The portion of prior service pensions which is not provided by members' prior service accumulated

contributions is derived from contributions of the city. (Prior code § 2904.140r.)

3.24.1670 Prior service pension - For members formerly reinstated from service retirement.

If a member who is governed by the provisions of this Part 16 should retire for service pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for service he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his prior service pension, upon his latest retirement for service, shall be as follows:

- A. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his prior service pension shall be in the same amount as his prior service pension prior to his reinstatement, adjusted in accordance with any change in the provisions governing the calculation of such prior service pension made after said reinstatement and applicable to such pensions being paid at the date of the change.
- B. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding service retirement, then in that event his prior service pension shall be calculated on the basis of:
 - 1. His age at the time of his latest retirement (taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his last retirement) determined by deducting from his age at his subsequent retirement the aggregate time during which he was on retirement; and
 - 2. If final compensation entered into the calculation of his prior service pension before his reinstatement, on the basis of his final compensation as it was at the date of

his preceding service retirement.

(Prior code § 2904.140s.)

3.24.1680 Prior service pension - For members formerly reinstated from disability retirement.

If a member who is governed by the provisions of this Part 16 should retire for disability pursuant to the provisions of this retirement system after the effective date of this part, and if subsequent to being so retired for disability he is reinstated to service, and if after such reinstatement to service he retires for service hereunder, his prior service pension upon his latest retirement for service, shall be as follows:

- A. If such member's latest service retirement occurs before such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his prior service pension shall be calculated on the basis of:
 - His age on the date he was previously retired for disability, taken to the preceding completed quarter year; and
 - His final compensation as it was on the date he was previously retired for disability.
- B. If such member's latest service retirement occurs after such member renders at least one year of city service for which he is entitled to credit under this system following his preceding reinstatement from his preceding disability retirement, then in that event his priar service pension shall be calculated on the basis of:
 - His age at the time of his latest service retirement taken to the preceding completed quarter year but not less than the minimum retirement age applicable to him at his last retirement, determined by deducting from his age at his subsequent retirement the aggregate time during which he was on disability retirement; and
 - 2. If his preceding disability retirement allowance included an annuity or pension derived from his accumulated prior service contributions and from the city's prior service contributions and his final compensation entered into the calculation of such annuity or pension, on the basis of his final compensation as it was at the date of his preceding disability retirement.

(Prior code § 2904.140t.)

Part 17

DISABILITY RETIREMENT GENERALLY

Sections:

3.24.1700	Limited applicability of Part 17.
3.24.1710	Retirement for disability after
	attaining age sixty.
3.24.1720	Retirement for disability before
	attaining age sixty.
3.24.1730	Disability retirement pension -
	Amount.
3.24.1740	Disability retirement pension -
	Reduction required when,
3.24.1750	Disability retirement pension -
	Maximum amount.

3.24.1700 Limited applicability of Part 17.

On and after the effective date of this section, the provisions of this Part 17 shall no longer apply to any person to whom the provisions of Part 18 of Chapter 3.24 thereafter apply.

(Prior code § 2904.140z1.)

(Prior code § 2904.14021.)

3.24.1710 Refirement for disability after attaining age sixty.

If a member is retired for disability after he has attained age sixty, he shall receive a disability retirement allowance equal to what would be his service retirement allowance if such were calculated under, in accordance with and pursuant to the provisions of Part 15 of Chapter 3.24. (Prior code § 2904.141.)

3.24.1720 Retirement for disability before attaining age sixty.

If a member is retired for disability before he attains age sixty, he shall receive a disability retirement allowance which shall consist of:

- An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement; and
- B. A "disability retirement pension" derived from the contributions of the city.

(Prior code § 2904.142.)

3.24.1730 Disability retirement pension - Amount.

The disability retirement pension shall be such an amount as with that portion of his annuity provided by his accumulated normal contributions plus his accumulated prior service contributions, will make his disability retirement allowance equal:

A. Ninety percent of one-sixtieth of his final compensation multiplied by the number of years

of service credited to him; or

B. If the disability retirement allowance computed under subsection A of this section does not exceed one-fourth of his final compensation, ninety percent of one-sixtieth of his final compensation multiplied by the number of years of service which would be creditable to him were his service to continue until attainment by him of age sixty, but in such case the retirement allowance shall not exceed one-fourth of such final compensation.

(Prior code § 2904.143.)

3.24.1740 Disability retirement pension - Reduction required when.

- A. If, prior to attaining age fifty-five, a recipient of a disability retirement allowance engages in a gainful occupation not in the city service, the board shall reduce his monthly disability retirement pension to an amount which when added to the compensation earned monthly by him, shall not exceed the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.
- If his earnings are further altered, the board may further alter his disability retirement pension to the lower of the following amounts:
 - The amount of the disability retirement pension upon which he was originally retired;
 - 2. An amount which, when added to the compensation earned by him, shall equal the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation carnable by a person holding it immediately prior to its abolition.

C. When he reaches age fifty-five, his retirement allowance shall be made equal to the amount at which it would be in the absence of a reduction under this section.

(Prior code § 2904.145.)

3.24.1750 Disability retirement pension - Maximum amount.

In no event shall the disability retirement pension under Sections 3.24.1720 and 3.24.1730 be more than sufficient to make the disability retirement allowance, exclusive of any annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions which would be receivable by a member if he were to retire for service at age sixty and his service retirement allowance were computed pursuant to and in accordance with the provisions of Part 15 of Chapter 3.24. (Prior code § 2904.144.)

Part 18

DISABILITY RETIREMENT FOR CERTAIN MEMBERS ON AND AFTER EFFECTIVE DATE

Sections:

3.24.1800 Applicability of Part 18.
3.24.1810 Applicability of Part 17 to disability retirement allowance to members entitled to benefits pursuant to Part 18.
3.24.1820 Disability retirement allowance - For persons retiring after age fifty-five.
3.24.1830 Disability retirement allowance - For persons retiring before age fifty-five.
3.24.1840 Disability retirement pension.

3.24.1850 Maximum disability retirement.
3.24.1860 Disability retirement allowance Reduction because of certain

earnings.

3.24.1800 Applicability of Part 18.

A. The provisions of this Part 18 shall govern and be applicable only on and after the effective date of this part, and shall then apply only to the following members of the retirement system, and to disability retirement benefits payable to them after the effective date of this part, as follows:

- All persons who hecame or become members of this retirement system on or after the effective date of Part 16 of this ehapter, excepting persons who on said effective date of said Part 16 were on service retirement or disability retirement under this retirement system who were or could subsequently he reinstated from such retirement;
- 2. Each person who became a member of the retirement system prior to the effective date of said Part 16 if he was a member of such system on said effective date and if, in addition, he was given the option specified in Section 3.24.1560 of Part 16 and exercised said option in the manner and within the time specified in Section 3.24.1570 of Part 16.
- B. Any person who hecame a member of the retirement system prior to the effective date of said Part 16 shall not be governed by the provisions of this Part 18, and shall not be entitled to any of the henefits provided for or specified in this part, if he was not a member of the retirement system on the effective date of said Part 16, or if he was not given the option hereinafter specified in said Section 3.24.1560, or if he was given such option but refused or failed to exercise such option in the manner and within the time specified in Section 3.24.1570; but any such person shall continue to be governed by the provisions of Part 17 of this Chapter 3.24.
- C. Persons who, under and by virtue of the preceding provisions of this section are to be governed by the provisions of this Part 18 shall be entitled to such rights and benefits as are provided for in this Part 18, subject to the conditions, limitations, restrictions and requirements mentioned or referred to in this Part 18 or elsewhere in this Chapter 3.24, in lieu of being governed by the provisions of Part 17 and in lieu of being entitled to any of the rights or benefits provided for in Part 17.

(Prior code § 2904.145h.)

3.24.1810 Applicability of Part 17 te disability retirement allowance to members entitled to benefits pursuant to Part 18.

Notwithstanding the provisions of Part 18, the disability retirement allowance calculated in accordance with the provisions of this Part 18 shall not be less than the disability retirement allowance calculated in accordance with Part 17 of this chapter. (Prior code § 2904.145n.)

3.24.1820 Disability retirement allowance - For persons retiring after age fifty-five.

Subject to other provisions of this Part 18, if a member is retired for disability after he has attained the age of fifty-five yeara, he shall receive a disability retirement allowance equal to what would be his service retirement allowance if such were calculated under, in accordance with and pursuant to the provisions of Part 16 of Chapter 3.24. (Prior cpde § 2904.146i.)

3.24.1830 Disability retirement allowance - Fer persons retiring before age fifty-five.

Subject to other provisions of this Part 18, if a member retired for disability before he attains the age of fifty-five years, he shall receive a disability retirement allowance which shall consist of:

- An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement for disability; and
- B. A disability retirement pension derived from epatributions of the city.
 (Prior code § 2904.145j.)

3.24.1840 Disability retirement pension.

The disability retirement pension referred to in subsection B. of Section 3.24.1830 shall be in such an amount of money as, with that portion of the annuity provided by the member's accumulated normal contributions plus his accumulated prior service contributions, will make his disability retirement allowance equal:

- A. Ninety percent of one-fiftieth of his final compensation multiplied by the number of years of service credited to him; or
- B. If the disability retirement allowance computed pursuant to the foregoing provisions of this Part 18 does not exceed one-fourth of his final compensation, ninety percent of one-fiftieth of his final compensation multiplied by the number of

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years of service which would be credited to him were his service to continue until attainment by him of the age of fifty-five years, but in such case the disability retirement allowance shall ant exceed one-fourth of such final compensation.

(Prior code § 2904.145k.)

3.24.1850 Maximum disability retirement.

In no event shall the disability retirement alinwance payable to a member under the provisions of this part, exclusive of any annuity provided by accumulated additional contributions, exceed the service retirement allowance, exclusive of any annuity purchased by accumulated additional contributions, to which such member would be entitled if at the time he retired for disability he were fifty-five years of age and were retired for service in lieu of being retired for disability, and if, in addition, his service retirement allowance were computed and determined pursuant to and in accordance with the provisions of Part 16 of this chapter.

(Prior code § 2904.1451.)

3.24.1860 Disability retirement allowance - Reduction because of certain earnings.

- A. if, prior to attaining age fifty-five, a recipient of a disability retirement allowance engages in a gainful occupation not in the city service, the board shall reduce his monthly disability retirement allowance to an amount which, when added to the compensation earned monthly by him shall not exceed the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, or, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.
- B. If his earnings are further altered, the board may further alter his disability retirement allowance to the lower of the following amounts:
 - The amount of the disability retirement allowance upon which he was originally retired.
 - 2. An amount which, when added to the compensation earned by him, shall equal the amount of the maximum compensation earnable by a person holding the position which he held at the time of his retirement, nr, if that position has been abolished, the maximum compensation earnable by a person holding it immediately prior to its abolition.

C. When he reaches age fifty-five, his disability retirement allowance shall be made equal to the amount at which it would be in the absence of a reduction under this section.

(Prior cnde § 2904, 145m.)

Part 19

OPTIONAL SETTLEMENTS

Sections:

3.24.1900 Election in change refirement allowance.

3.24.1910 Time of election.

3.24.1920 Optional settlement one.

3,24.1930 Optional settlement twn.

3.24.1940 Optional settlement three.

3.24.1950 Optional settlement four.

3.24.1900 Election to change retirement allowance.

In lieu of the retirement allowance for his life alone, a member or retired member may elect, or revoke or change a previous election prior to the previous election, to have the actuarial equivalent of his retirement allowance as of the date of retirement applied to a lesser retirement allowance, in accordance with one of the optional settlements specified in this Part 19.

(Prior code § 2904.146.)

3.24.1910 Time of election.

Such election, revocation or change of election shall be made prior to the making of the first payment on account of any retirement allowance. If the member retired or retires before February 1, 1965. and died or dies after retirement but within thirty days from the date upon which his election or changed election is received at the office of this system, his election is of nn effect, and his death shall be considered as that of a member before retirement unless the board, upon its determination that the election would have been received at the office of this system more than thirty days prior to the death but for circumstances not within the control of the member and not based upon any consideration of health, family relationship or other consideration personal to the member, accepts the election. If, however, the member retired nr retires on or after February 1, 1965, his subsequent death, regardless of how soon it occurs after his retirement or after his election or after

receipt of his election shall not affect his prior election, and his death shall be deemed to have occurred after his retirement. (Prior code § 2904.147.)

3.24.1920 Optional settlement one.

Optional settlement one consists of the right to have a retirement allowance paid such member until his death and if he dies before he receives in annuity payments the amount of his accumulated contributions at retirement, to have the balance at death paid to his beneficiary or estate. (Prior code § 2904.148.)

3.24.1930 Optional settlement two.

Optional settlement two consists of the right to have a retirement allowance paid him until his death and thereafter to his beneficiary for life. (Prior code § 2904.149.)

3.24.1940 Optional settlement three.

Optional settlement three consists of the right to have a retirement allowance patd him until his death and thereafter to have one-half of his retirement allowance paid to his beneficiary for life. (Prior code § 2904.150.)

3.24.1950 Optional settlement four.

Optional settlement four consists of such other benefits as are the actuarial equivalent of his retirement allowance, that he may select subject to the approval of the board. However, the actuarial equivalent of benefits under this optional settlement payable to the member's beneficiary shall not exceed the actuarial equivalent of the benefits which would be payable to that beneficiary if the member had elected optional settlement two. (Prior code § 2904.151.)

Part 20

DEATH

Sections:

3.24.2000 Death benefits - Conditions. 3.24.2010 Basic death benefit - Designated. 3.24.2020 Basic death benefits - Election procedures.

3.24.2030 Payment on death of one receiving retirement allowance.

3.24.2040 Death prior to retirement -Payment to spouse, children or

3.24.2000 Death benefits - Conditions.

Upon the death, before the effective date of his retirement or before his retirement is approved, whichever is the later, of a member while in the city service, or within four months after discontinuance of city service, provided he has not been paid more than one-fourth of his accumulated normal contributions, or while physically or mentally incapacitated for the performance of his duty, if such incapacity has been continuous from discontinuance of city service, this system is liable for a death benefit, payable to his estate or to his beneficiary. Upon the death, before the effective date of his retirement or before his retirement is approved, whichever is the later, of a member under eireumstances in which this system is not so liable for the death benefit, this system is liable for a limited death benefit which consists only of accumulated contributions of the member, payable to his estate or his beneficiary. (Prior code § 2904.152.)

3.24.2010 Basic death benefit - Designated. The basic death benefit shall consist of:

A. His accumulated contributions;

B. An amount provided from contributions by the city equal to one-tweifth of the annual compensation earnable by the deceased member during the twelve months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed one-half of such compensation.

(Prior code § 2904.153.)

3.24.2020 Basic death benefits - Election procedures.

A. A member may elect or by a writing filed with the board to have all or part of the basic death benefit paid in monthly installments, fixed in number or amount and not involving life contingency, subject to such rules as the board may adopt.

Regular interest shall be credited on the unpaid

balance of benefits payable.

- B. If a member dies without having made an election under subsection A. of this section, his beneficiary, after the death of the member and prior to the payment to him of the basic death benefit or any part thereof, may elect by a writing filed with the board to have the basic death benefit paid to him in the manner provided in subsection A. of this section.
- C. When an election has been made to have the basic death benefit paid in accordance with subsection A. of this section, the first of such installments shall be paid on the first day of the month next following the date when the basic death benefit would otherwise be payable, and one of such installments shall be paid on the first day of each month thereafter. Such monthly installments shall be the actuarial equivalent of the portion of the basic death benefit to be paid in installments on the date that such basic death benefit would otherwise be payable.
- D. The board may provide that any election by a member or by a beneficiary under the provisions of this section is void if the amount of this monthly installment is less than the minimum amount fixed by the board.

(Prior code § 2904.154.)

3.24.2030 Payment on death of one receiving retirement allowance.

Upon the death of any person, after retirement and while receiving a retirement allowance from this system, there shall be paid to his estate or to such beneficiary as he shall nominate by written designation duly executed and filed with the board, the sum of five hundred dollars, to be provided from contributions by the city.

(Prior code § 2904.155.)

3.24.2040 Death prior to retirement - Payment to spouse, children or estate.

A. Upon the death while in city service and before the effective date of his retirement of a member who has attained the minimum age for voluntary service retirement applicable to him at the time of his death and who is credited with twenty or more years of city service, a monthly allowance equal to one-half of the unmodified retirement allowance which the member would have been entitled to receive if he had retired for service on the date of his death shall be payable as follows:

 If the deceased member was a male and is survived by a surviving wife, said monthly allowance shall be paid to his surviving wife for as long as she lives; or

 If the deceased member was a female and is survived by a surviving husband, said monthly allowance shall be paid to the surviving husband for as long as he lives; or

- 3. If the deceased member is not survived by either a surviving wife nr surviving husband, but is survived by a surviving unmarried child or children under the age of eighteen years, said monthly allowance shall be paid to such of his or her said children as are both unmarried and under the age of eighteen years, share and share alike, until each has either married or attained the age of eighteen years, whichever is the earlier; provided, that no child shall be emitted to or be paid any allowance under this section after marrying or attaining the age of eighteen years.
- 4. If the deceased member is survived by a surviving wife or surviving husband and such surviving wife or surviving husband subsequently dies before all children of the deceased member shall have either married or attained the age of eighteen years, said monthly allowance shall then be paid to such of his said children, if any, as are unmarried and under the age of eighteen years, share and share alike, until each has either married or attained the age of eighteen years; provided, that no child shall be entitled to or be paid any allowance after marrying or attaining the age of eighteen years.
- 5. If the deceased member is not survived by a surviving wife or surviving husband or by any surviving children who are unmarried and under the age of eighteen years, no monthly allowance shall be payable under this section.
- B. The allowance provided by this section shall be paid in lieu of the basic death benefit, but the surviving wife or surviving husband, or, if there is no surviving wife or surviving husband, all of the surviving ohildren, if any, who qualify for said monthly allowance, may elect, before any monthly allowance is paid to any person under this section, to receive said baaic death benefit in

- lieu of said monthly allowance, in which event the basic death benefit shall be paid to whomsoever is entitled to the same and no allowance shall be paid to any person under this section.
- C. If the total of all monthly allowances paid or payable under this section is less than the basic death benefit which would have been otherwise payable on account of the member's death, the amount of such basic death benefit less the total amount of all allowances paid under this section shall be paid in a lump sum to the surviving children, if any, of the deceased member, share and ahare alike, or, if there are no such children, to the estate of the person last receiving said allowance.
- D. The board shall compute the amount by which benefits paid pursuant to this section exceed the benefits which would otherwise be payable, and shall charge any such excess against the contributions of the city so that there shall be no increase in contributions of the members by reason of benefits paid pursuant to this section.
- E. As used in this section, a "surviving wife" means a wife who was married to the deceased member at the time of the member's death and for at least one year immediately preceding his death, a "surviving husband" means a husband who was married to the deceased member at the time of the member's death and for at least one year immediately preceding the member's death, and "child" includes a posthumously born child of the deceased member.

(Prior code § 2904.156.)

Part 21

SPECIAL BENEFITS FOR. CERTAIN FORMER HEALTH DEPARTMENT EMPLOYEES

Sections:

3.24.2050	Optinn for special benefits -
	Conditions.
3.24.2060	Special retirement allowance.
	Basic death benefit.
3.24.2080	Death benefit where deceased
	had twenty years' scrvice and

was at least fifty-five years old.

3.24,2090	Discontinuance of service -
	Election to leave accumulated
•	contributions in fund.
3.24,2100	Reentry into city service.
3.24.2110	Additional costs to be borne by
	city.
3.24.2120	Reference to other parts or sections.

3.24,2050 Option for special benefits - Conditions.

- A. Subject to the conditions, limitations, restrictions and requirements hereinafter set forth or contained in this section or in other sections of this Part 21, any person employed on June 30, 1968, in the city's health department who on July 1, 1968 was employed by the county of Santa Clara in the Santa Clara County health department shall have an option to elect to obtain the special benefits provided for in this part, in lieu of any other rights or benefits provided by other provisions of this part, if all of the following requirements and conditions are met and satisfied:
 - Such person was on June 30, 1968, a member of this retirement system; and
 - Such person's employment in the health department of the city was terminated, from any cause, on June 30, 1968; and
 - At the time of termination of said person's employment in said health department of the city, such person had standing to his credit in this retirement system accumulated contributions of five hundred dollars or more; and
 - 4. Such person shall not have withdrawn from the retirement fund pursuant to Section 3.24.510 any portion of his accumulated contributions or, if he shall have withdrawu any such accumulated contributions pursuant to such Section 3.24.510, he repays to the secretary, for deposit in the retirement fund, at the time he exercises the option herein granted to him, an amount of money equal to all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510; and
 - Such person shall not have retired, nor shall have received any retirement benefits, pursuant to the provisions of this retirement system.

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- B. No such person to whom such option is hereinabove given shall be governed by the provisions of this Part 21, nor be entitled to any of the rights or benefits provided for in this Part 21, unless he exercises such option in the manner and within the time specified in this section, and no later.
- C. Each such person who exercises said option within the time and in the manner specified in this section shall on and after the exercise of such option be governed by the provisions of this Part 21, and be entitled to the rights and benefits provided for in this part, subject to the abovementioned conditions, limitations, restrictions, and requirements, in lieu of being governed by any other provision of this chapter and in lieu of being entitled to any other rights or benefits provided by other provisions of Chapter 3.24.
- D. Each person who is given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement on a form to be furnished to him on his request by said secretary, declaring that he elects to exercise said option, and must in addition, if he shall have already withdrawn any accumulated contributions pursuant to Section 3.24.510, pay to the said secretary for redeposit in the retirement fund any and all accumulated contributions theretofore withdrawn hy him pursuant to said Section 3.24.510. Said statement shall he filed and said moneys shall be paid as aforesaid on or before, and no later than December 31, 1969.

E. Upon filing said written statement and payment of such money in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his said option.

F. Each person who is eligible for and who exercises the abovementioned option in the time and manner specified in this section shall continue to be a member of the retirement system established by this chapter, but shall be entitled only to the allowance and benefits provided for in this Part 21, and to no other benefits or allowances.

(Prior code § 2904.160.)

3.24.2060 Special retirement allowance.

- A. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050 and such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until terminated by his retirement, either for services or for disability, under and pursuant to a retirement plan or system of the county, then in that event such person, upon being so retired from county service, shall be deemed to have retired for the same eause from city service, as of the day of his retirement from county service.
- Upon such retirement from city service, such person shall be entitled to receive, and shall be paid, from the retirement fund established by this retirement plan or system, a monthly service retirement allowance or, if his retirement from county service is for disability, a monthly disability retirement allowance. Such monthly service retirement or monthly disability retirement allowance, as the case may be, shall be an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to any applicable county retirement plan or system, will make the total amount of such city allowance and county allowance equal to the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such person would be entitled to receive under and pursuant to the provisions of this retirement system (other than the provisions of this Part 21), as it existed on June 30, 1968, if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system or plan and if such county service had been rendered for the city at the same rate of compensation as that paid him by the county for such service.
- C. In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any option, settlement provision or provisions existing in either the city's retirement system.

However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2060 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.

- D. If after retiring from county and city service as aforesaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into county service, and except to the extent hereinafter otherwise expresaly provided, neither he nor his estate or any of his survivors shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county service, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his retirement.
- E. The provisions of this section shall not be applicable, and a person shall have no rights thereunder, if such person's employment with the county, commenced on July 1, 1968, is terminated by means for any reason other than service retirement or disability retirement, even though at the time of termination of such county service, or subsequent thereto, such person is or becomes entitled to a retirement allowance or any other benefit under the county's retirement system or plan.

(Prior code § 2904.161.)

3.24.2070 Basic death benefit.

A. In each of the following situations, to wit:

- Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until termination by his death before retirement and while in county service; or
- 2. Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and such person subsequently retires from city service pursuant to the provisions of Section 3.24.2060 and then dies within four months from and after the effective date of his said retirement without having received from the city, for or because of such retirement, benefits or allowances totaling more than one-quarter of his total accumulated contributions in the retirement system; or
- Where a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24,2050, and such person's service with and for the county of Santa Clara is subsequently discontinued by means other than retirement, because of physical or mental incapacity for the performance of duty, and such discontinuance and incapacity continues without interruption from the time of his discontinuance of county service until his death, and such person has not of his accumulated withdrawn any contribution from either the county's or the city's retirement system; such person's designated beneficiary, or his estate if no beneficiary shall have been designated, shall be entitled to receive, and shall be paid, from the retirement fund established by the provisions of this chapter, as a death benefit, the following sums of money:
 - All of such person's accumulated contributions, if any, in this retirement system; and

- b. An amount of money equal to onetwelfth of such person's annual compensation during the twelve months immediately preceding the termination of his service with and for the county of Santa Clara, multiplied by the total number of completed years of service for which he is entitled to credit under his retirement system and under said county's retirement system, but not to exceed a maximum of one-half of such annual compensation, reduced by the amount of death benefit, excluding return of accumulated contributions paid or payable to such beneficiary and/or estate under the county's retirement system.
- B. Subject to the provisions of Section 3.24.2020, the person because of whose death such death benefit is payable may elect prior to his death, or his beneficiary may elect after his death, to have said death benefit paid in installments as provided in Section 3.24,2020 of this chapter.
- C. In no event shall any beneficiary, estate or other person be entitled to any payments under the provisions of this section if any person is paid or becomes entitled to any allowance or benefits under the provisions of Section 3.24.2080.

(Prior code § 2904.162.)

3.24.2080 Death benefit where deceased had twenty years' service and was at least fifty-five years old.

A. If a person who is eligible for and entitled to the option specified in Section 3.24,2050 exercises such option in the manner and time specified in such Section 3.24.2050, and if in addition such person's employment with the county of Santa Clara continues without interruption from July 1, 1968, until terminated by his death before retirement and while in county service, and if in addition such person at the time of his said death had already attained the age of fifty-five years and was entitled to credit, under the retirement system of the county of Santa Clara and under this retirement system for a total of twenty or more years of county and city service, then in that event a monthly allowance equal to one-half of the monthly service retirement allowance which such person would have been entitled to receive pursuant to the provisions of Section 3.24.2060 from the retirement fund established by this retirement plan or system if as of the date

of his death he had retired from county and city service pursuant to the provisions of said Section 3.24.2060, shall be paid to the following persons, as follows:

- 1. If the abovementioned deceased person leaves a surviving spouse, to his surviving spouse for as long as such surviving spouse lives or until such surviving spouse remarries, whichever is earlier; and thereafter, collectively to those surviving children, if any, of the abovementioned deceased person who are under the age of eighteen years and unmarried until all such children attain the age of eighteen years, become married or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies;
- 2. If the abovementioned deceased person leaves no surviving spouse, but leaves surviving unmarried children under the age of eighteen years, collectively to those surviving unmarried children who are under the age of eighteen years until all such children become married, attain eighteen years of age or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies.
- B. If the abovementioned deceased person leaves no surviving spouse and no unmarried children under the age of eighteen years at the time of his death, no allowance shall be payable or paid under or pursuant to the provisions of this section.
- C. Any allowance payable or paid under or pursuant to the provisions of this section shall be in lieu of any benefits payable under or pursuant to the provisions of Section 3.24.2070; however, a person, or such person's guardian, qualifying for an allowance under this section may elect, before receiving any such allowance, to receive the benefits payable under Section 3.24.2070 in lieu of receiving or being entitled to receive any allowance or allowances under this section.
- D. As used in this section, "surviving spouse" means a surviving husband or wife who was married to the abovementioned deceased person for at least one year immediately prior to the deceased person's death, and "surviving child" includes a surviving posthumously born child.

- E. If, after all payments to which any person or persons may be entitled under the above provisions of this section have heen paid, the total of such payments made under the above provisions of this section are less than the basic death benefit which would otherwise have been payable under Section 3.24.2070 because of said person's death, then in that event the amount of such basic death benefit, less the amount of all payments made under and pursuant to this section, shall be paid in a lump sum as follows:
 - If the person last entitled to the allowance provided by this section was the surviving spouse of the abovementioned deceased person, and such surviving spouse has remarried and is alive, such sum shall be paid to such remarried spouse;
 - Otherwise, to the surviving children of the abovementioned deceased person, share and share alike, or if there are no surviving children, to the estate of the person last entitled to any allowance under this section.

(Prior code § 2904.163.)

3.24.2090 Discontinuauce of service - Election to leave accumulated contributions in fund.

A. 1. If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in said Section 3.24.2050, and if in addition such person's employment with the county of Santa Clara is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the administering board of the retirement system of the county to have resulted in permanent discontinuance (and in such case, as of the date of the determination by said board that the discontinuance is permanent), or if the disability retirement of such person under both the county's retirement system and under the city's retirement system is followed by cessation of the disability and cancellation of the disability allowance such person was receiving from the county retirement system and also the disability allowance such person was receiving from this retirement system and such person does not reenter county or city service or employment, and if, in addition, the total amount of such person's accumulated contributions standing to his credit at such time in this city's retirement

- system is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of such right is mailed by this system to such person's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the retirement fund of this system. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to credit for twenty years of service with the city. An election to allow all or part of one's accumulated contributions to remain in the retirement fund established by this system may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn.
- Upon withdrawal of any accumulated contributions, the member withdrawing the same shall lose, and shall not be entitled to any credit for any city service on account of which such withdrawn contributions had theretofore been paid into this system's retirement fund. In determining the city service for which a member is no longer entitled to credit upon withdrawal of all or part of his contributions, the withdrawn contributions shall be deemed to have been paid into the retirement fund on account of the latest city service rendered by such person to the city, or on account of his earliest such service if so requested by such person at the time he withdraws his contributions.
- 3. Such person may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for city service during such periods of time as may be designated by him without withdrawing any contributions paid by him because of such city service, provided he retains credit for not less than five years of continuous city service; and in such event, determining his eligibility for or the amount of any benefits to which he may become entitled, he shall

- be given no credit for any service so relinquished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 or Section 3.24.740.
- If such person does elect in the above circumstances to allow his accumulated contributions to remain in the retirement fund established by this system, his membership in this system shall be deemed to continue, and he shall be entitled to retirement for service or disability upon satisfying the requirements for such retirement as contained in other parts of this chapter, as such parts exist and are worded on July 1, 1968, except that he shall not be subject to the minimum service requirements. After qualification of such memher for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and city service standing to his credit at the time of retirement and on the city employer contributions held for him, and calculated in the manner provided by the provisions of other parts of this chapter, as they read on June 30, 1968, for determination of the amount of such allowance for other members of this system except that the provisions of this chapter for minimum service and disability retirement allowances do not apply to him unless he meets the minimum service requirements therefor. In the event such member should die before retiring pursuant to the provisions of this section, a death benefit equal to his accumulated contributions in this retirement system shall be paid to his designated beneficiaty or to his estate if he fails to designate a beneficiary, unless a death benefit is payable under the provisions of Section 3.24,2070, in which latter event the death benefit payable under Section 3.24.2070 shall be deemed to be in lieu of any death benefit provided for herein and no death benefit shall be payable under the provisions of this section.
- In the event that the retirement system of the B. 1. county of Santa Clara should also give to said member the right, in the abovespecified circumstances, to continue to be a member of the county retirement system and to subsequently become entitled to service or disability retirement under the county system at the same time that such person could retire under the provisions of subsection A. of this section, and if such member should subsequently retire for service or disability under the county's system pursuant to such provisions of the county's retirement system at the same time that he retircs under the city's retirement system pursuant to the above provisions of subsection A. of this section, then and in that event the monthly service retirement allowance or monthly disability retirement allowance, as the case may be, which such person shall be entitled to receive from the retirement fund established by this city system shall be, in lieu of the amount hereinabove specified in subsection A., an amount of money which when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to the county retirement system, will make the total amount of such city allowance and county allowance equal the munthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such persons would be entitled to receive under and pursuant to the provisions of subsection A, of this section if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system and if such county service had been rendered for the city at the same rate of compensation as that paid to him by the
 - In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any

county for such service.

optional settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2090 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.

3. If after retiring from county and city service as a foresaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into enunty service, and, except to the extent hereinafter ntherwise expressly provided, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again he retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement from county services, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinahove expressly granted by the above provisions of this section with respect to his first retirement.

(Prior cede § 2904.164.)

3.24.2100 Reentry into city service.

A. If after retiring from eity service under and pursuant to the provisions of Section 3.24,2060 or 3.24,2090 of this part such retired person should again become an officer or employee of the city of San José, other than as a member of

the city council or member of a city board or commission, his city retirement and city retirement allowance shall cease as of the date he is reemployed by the city, and, except to the extent hereinafter otherwise expressly provided in this section, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional settlement provision, or any other right under the provisions of this chapter. If such person's new employment with the city is in a position which entities him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if he should subsequently retire under and pursuant to the provisions of other parts of this chapter, and if at the time he so retires pursuant to provisions nf other parts he is receiving or is or becames entitled in receive a retirement allowance from the county of Santa Clara because of county service rendered after July 1, 1968, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system, while he is receiving a retirement allowance from the county of Santa Clara, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2060. The last-mentioned election must be made prior to the time he is granted retirement.

If a person who is eligible for and entitled to the option specified in Section 3.24.2050 exercises such option in the manner and time specified in Section 3.24,2050, but such person's employment with the county of Santa Clara does not continue without interruption from July 1, 1968 until terminated by his retirement either for service or disability under and pursuant to the retirement plan or system of said county, and such person should subsequently again become an officer or employee of the city, he shall thence forth have no rights whatsoever to any allowances or benefits under the provisions of this Part 21, except such as may hereinafter be expressly granted by the provisinns of this section. If such person's said new employment with the city is in a position which entitles him to membership in the

retirement system established by the provisions of this chapter, he shall theneeforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided, and excepting, however, that if such person's employment with the county of Santa Clara had been discontinued under and by virtue of eircumstances or reasons specified in Section 3.24.2090, and if in addition upon so discontinuing his employment with the county such person was entitled to continue and has continued his membership in the county's retirement system as described in subsection B. of Section 3.24.2090, and if in addition such person, at the same time that he should subsequently retire from city service under the retirement system established by this chapter should also be eligible to retire and does retire for or from county service under the county's retirement system, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system while he is receiving a retirement allowance from the county, a monthly retirement allowance from the city determined and calculated as provided in Section 3,24,2060. The last-mentioned election must be made prior to the time he is granted retirement.

(Prior code § 2904.165.)

3.24.2110 Additional custs to be borne by city.

All additional costs incurred by this retirement system because of any special benefits provided by the provisions of this Part 21 to any city officers or employees or former officers or employees over and above such benefits as would be provided to such employees by provisions of other parts of this chapter if this Part 21 has not been adopted shall be borne and paid for by the city.

(Prior code § 2904, 167.)

3.24,2120 Reference to other parts or sections.

Whenever reference is made by any of the provisions of this Part 21 tn any other part, or to any sections contained in any other part of this chapter, such reference shall be deemed to be made to such other part or section or sections as it or they existed on June 30, 1968.

(Prior code § 2904.166.)

Part 22

SPECIAL BENEFITS FOR CERTAIN FORMER COMMUNICATIONS DEPARTMENT EMPLOYEES

Sections:

3.24.2150 Option for special benefits.

3.24.2160 Special retirement allowance.

3.24.2170 Basic death benefit.

3.24.2180 Death benefit where deceased had twenty years' service and was at least fifty-five years old.

3.24,2190 Discontinuance of service Election to leave accumulated
contributions in fund.

3.24.2200 Reentry into city service.

3.24,2210 Return to city employment.

3.24.2220 Retirement at age fifty-five - Less than five years of county service.

3.24.2230 Additional costs to be borne by city.

3.24.2240 Reference to other parts or sections.

3.24,2150 Option for special benefits.

- A. Subject to the conditions, limitations, restrictions and requirements hereinafter set forth or contained in this section or in other sections of this Part 22, any person employed on September 8, 1974, in the city's communications department who on September 9, 1974, was employed by the county of Santa Clara in the Santa Clara County communications department shall have an option to elect to obtain the special benefits provided for in this part, in lieu of any other rights or benefits provided by other provisions of this part, if all of the following requirements and conditions are met and satisfied:
 - Such person was on September 8, 1974, a member of this retirement system; and
 - Such person's employment in the communications department of the city was terminated, from any cause, on September 8, 1974; and
 - At the time of termination of said person's employment in the communications department of the city such person had standing to his credit in this retirement

system accumulated contributions of five hundred dollars or more; and

- 4. Such person shall not have withdrawn from the retirement fund pursuant to Section 3.24.510 any portion of his accumulated contributions, or, if he shall have withdrawn any such accumulated contributions pursuant to such Section 3.24.510, he repays to the secretary, for deposit in the retirement fund, at the time he exercises the option herein granted to him, an amount of money equal to all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510; and
- Such person shall not have retired, nor shall have received any retirement benefits, pursuant to the provisions of this retirement system.
- B. No such person to whom such option is hereinabove given shall be governed by the provisions of this Part 22; nor be entitled to any of the rights or benefits provided for in this Part 22 unless he exercises such option in the manner and within the time specified in this section and no later.
- C. Each such person who exercises said option within the time and in the manner specified in this section shall on and after the exercise of such option be governed by the provisions of this Part 22, and be entitled to the rights and benefits provided for in this port, subject to the abovementioned conditions, limitations, restrictions and requirements, in lieu of being governed by any other provision of this chapter and in lieu of being entitled to any other rights or benefits provided by other provisions of this chapter.
- D. Bach person who is given the option specified in this section must, if he desires to exercise said option and in order to exercise the same, file with the secretary of the retirement board a written statement on a form to be furnished to him on his request by said secretary, declaring that he elects to exercise said option, and must in addition, if he shall have already withdrawn any accumulated contributions pursuant to Section 3.24.510, pay to the said secretary, for redeposit in the retirement fund, any and all accumulated contributions theretofore withdrawn by him pursuant to said Section 3.24.510. Said statement shall be filed and said moneys shall be paid as aforesaid on or before and nu later than December 31, 1974.

E. Upon filing such written statement and payment of such money in the manner and within the time hereinabove specified, such person shall be deemed to have exercised his option.

F. Each person who is eligible for and who exercises the abovementioned option in the time and manner specified in this section shall continue to be a member of the retirement system established by this chapter, but shall be entitled only to the allowance and benefits provided for in this Part 22, and to no other henefits or allowances.

(Prior code § 2904.168.)

3.24.2160 Special retirement allowance.

- A. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until termination by his retirement, either for service or for disability, under and pursuant to a retirement plan or system of said county, then in that event such person upon being so retired from county service shall be deemed to have retired, for the same cause, from city service, as of the day of his retirement from county service.
- Upon such retirement from city service, such person shall be entitled to receive, and shall be paid, from the retirement fund established by this retirement plan or system, a monthly service retirement allowance or, if his retirement from county service is for disability, a monthly disability retirement allowance. Such monthly service retirement or monthly disability retirement allowance, as the case moy be, shail be an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to any applicable county retirement plan or system, will make the total amount of such city allowance and county allowance equal to the monthly service retirement allowance, nr the monthly disability retirement allowance if the retirement is for disability, which such person would be entitled to receive under and pursuant to the provisions of this retirement system (other than the provisions of this Part 22), as it existed on September 8, 1974, if such person were entitled to have credited to him, as city service, all county service for which he is entitled to credit

under the county retirement system or plan and if such county service had been rendered for the city at the same rate of compensation as that paid

him by the county for such service.

- C. In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of such person's election to have part of his allowance paid in himself during his life and a part paid after his death to any survivor, estate or other person under any option, settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3,24.2160 should wish to have part of his above-specified city retirement allowance paid in himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions nf Part 19 of this chapter.
- D. If after retiring from county and city service as aforesaid any said person should become reinstated into county service, his city retirement and city retirement allowance shall cease as of the date he is reinstated into county service, and except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from eity service as of the date of his last retirement from county service, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his retirement.

E. The provisions of this section shall not be applicable, and a person shall have no rights thereunder, if such person's employment with the county commenced on September 9, 1974, is terminated by means or for any reason other than service retirement or disability retirement, even though at the time of termination of such county service, or subsequent thereto, such person is or becomes entitled to a retirement allowance or any other benefit under the county's retirement system or plan.

(Prior code § 2904.169.)

3.24.2170 Basic death benefit.

A. In each of the following situations:

- Where a person who is eligible for and entitled to the option specified in Section 3.24.2150, and such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until termination by his death before retirement and while in the county service;
- 2. Where a person is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person subsequently retires from city service pursuant to the provisions of Section 3.24.2160 and then dies within four months from and after the effective date of this said retirement without having received from the city, for or because of such retirement, benefits or allowances totaling more than one-quarter of his total accumulated contributions in the retirement system; or
- 3. Where a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and such person's service with and for the county of Santa Clara is subsequently discontinued by means other than retirement, because of physical or mental incapacity for the performance of duty, and such discontinuance and incapacity continues without interruption from the time of his discontinuance of county service until his death, and such person has not withdrawn any of his accumulated contribution from either the county's or the

city's retirement system; such person's designated beneficiary, or his estate if no beneficiary shall have been designated, shall be entitled to receive, and shall be paid, from the retirement fund established by the provisions of this part, as a death benefit, the following sums of money:

- All of such person's accumulated contributions, if any, in this retirement system; and
- b. An amount of money equal to onetwelfth of such person's annual compensation during the twelve months immediately preceding the termination of his service with and for the county of Santa Clara, multiplied by the total number of completed years of service for which he is entitled to credit under his retirement system and under said county's retirement system, but not to exceed a maximum of one-half of such annual compensation, reduced by the amount of death henefit, excluding return of accumulated contributions, paid or payable to such beneficiary and/or estate under the said county's retirement system.
- B. Subject to the provisions of Section 3.24.2020, the person because of whose death such death benefit is payable may elect prior to his death, or his beneficiary may elect after his death, to have said death benefit paid in installments as provided in Section 3.24.2020 of this chapter.
- C. In no event shall any beneficiary, estate or other person be entitled to any payments under the provisions of this section if any person is paid or becomes entitled to any allowance or henefits under the provisions of Section 3.24.2180.

(Prior code § 2904.170.)

3.24.2180 Death benefit where deceased had twenty years' service and was at least fifty-five years old.

A. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in such Section 3.24.2150, and if in addition such person's employment with the county of Santa Clara continues without interruption from September 9, 1974 until terminated by his death before retirement and while in county service,

and if in addition such person at the time of his said death had already attained the age of fiftyfive years and was entitled to credit, under the retirement system of the county of Santa Clara and under this retirement system, for a total of twenty or more years of county and city service, then in that event a monthly allowance equal to one-half of the monthly service retirement allowance which such person would have been entitled to receive pursuant to the provisions of Section 3.24.2160 from the retirement fund established by this retirement plan or system if as of the date of his death he had retired from county and city service pursuant to the provisions of said Section 3.24.2160, shall be paid to the following persons, as follows:

- 1. If the abovementioned deceased person leaves a surviving spouse, to his surviving spouse for as long as such surviving spouse lives or until such surviving spouse remarries, whichever is earlier; and thereafter, collectively to those surviving children, if any, of the abovementioned deceased person who are under the age of eighteen years and unmarried until all such children attain the age of eighteen years, become married or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies;
- 2. If the abovementioned deceased person leaves no surviving spouse, but leaves surviving unmarried children under the age of eighteen years, collectively to those surviving unmarried children who are under the age of eighteen years until all such children become married, attain eighteen years of age or die, whichever is earlier; provided that no child shall be entitled to receive or be paid any allowance after he or she marries, attains the age of eighteen years or dies.
- B. If the abovementioned deceased person leaves no surviving spouse and no unmarried children under the age of eighteen years at the time of his death, no allowance shall be payable or paid under or pursuant to the provisions of this section.
- Any allowance payable or paid under or pursuant to the provisions of this section shall be in lieu of

any benefits payable under or pursuant to the provisions of Section 3.24.2170; however, a person, or such person's guardian, qualifying for an allowance under this section may elect, before receiving any such allowance, to receive the benefits payable under Section 3.24.2170 in lieu of receiving or being entitled to receive any allowance or allowances under this section.

- D. As used in this section, "surviving spouse" means a surviving busband or wife who was married to the abovementioned deceased person for at least one year immediately prior to the deceased person's death, and "surviving child" includes a surviving posthumously born child.
- E. If, after all payments to which any person or persons may be entitled under the above provisions of this section have been paid, the total of such payments made under the above provisions of this section are less than the basic death benefit which would otherwise have been payable under Section 3.24.2170 because of said person's death, then in that event the amount of such basic death benefit, less the amount of all payments made under and pursuant to this section, shall be paid in a lump sum as follows:
 - If the person last entitled to the allowance provided by this section was the surviving spouse of the abovementioned deceased person, and such surviving spouse has remarried and is alive, such sum shall be paid to such remarried spouse;
 - Otherwise, to the surviving children of the abovementioned deceased person, share and share alike, or if there are no surviving children, to the estate of the person last entitled to any allowance under this section.

(Prior code § 2904.171.)

3.24.2190 Discontinuance of service - Election to leave accumulated contributions in fund.

A. 1. If a person who is eligible for and entitled to the option specified in said Section 3.24.2150 exercises such option in the manner and time specified in said Section 3.24.2150, and if, in addition, such person's employment with the county of Santa Clara is discontinued by reason of resignation or discharge, or by reason of layoff or leave of absence deemed by the administering board of the retirement system of the county to

have resulted in permanent discontinuance (and in such ease, as of the date of the determination by said board that the discontinuance is permanent), or if the disability retirement of such person under both the county's retirement system and under the city's retirement system is followed by cessation of the disability and cancellation of the disability allowance such person was receiving from the county retirement system and also the disability allowance such person was receiving from this retirement system and such person does not reenter county or city service or employment, and if in addition the total amount of such person's accumulated contributions standing to his credit at such time in this city's retirement system is five hundred dollars or more, he shall have the right to elect, not later than ninety days after the date upon which notice of such right is mailed by this system to such person's latest address on file in the office of this system, whether to allow all or part (but in no event less than five hundred dollars) of his accumulated contributions to remain in the retirement fund of this system. Failure to make such election shall be deemed an irrevocable election to withdraw his accumulated contributions unless the member is entitled to credit for twenty years of service with the city. An election to allow all or part of one's accumulated contributions to remain in the retirement fund established by this system may be revoked at any time as to all the contributions allowed to remain in the fund, or as to any part of them in excess of five hundred dollars; and all contributions covered by such revocation may then be withdrawn.

2. Upon withdrawal of any accumulated contributions, the member withdrawing the same shall lose, and shall not be entitled to any credit for, any city service on account of which such withdrawn contributions had theretofore been paid into this system's retirement fund. In determining the city service for which a member is no longer entitled to credit upon withdrawal of all or part of his contributions, the withdrawn

- contributions shall be deemed to have been paid into the retirement fund on account of the latest city service rendered by such person to the city, or on account of his earliest such service if so requested by such person at the time he withdraws his contributions.
- Such person may at any time, if he so elects, voluntarily relinquish such right as he may have to be credited for city service during such periods of time as may be designated by him without withdrawing any contributions paid by him because of such city service, provided he retains credit for not less than five years of continuous city service; and in such event, in determining his eligibility for or the amount of any benefits to which he may become entitled, he shall be given no credit for any service so relinguished by him, and any contributions left in the fund which were made because of the service for which he has relinquished credit shall be treated as additional contributions made pursuant to Section 3.24.590 or Section 3.24.740.
- If such person does elect, in the above circumstances, to allow his accumulated contributions to remain in the retirement fund established by this system, his membership in this system shall be deemed to continue, and he shall he entitled to retirement for service or disability upon satisfying the requirements for such retirement as contained in other parts of this chapter, as such parts exist and are worded on September 9, 1974, except that he shall nnt be subject to the minimum service requirements. After qualification of such member for retirement by reason of age or disability, he shall be entitled to receive a retirement allowance based upon the amount of his accumulated contributions and city service standing to his credit at the time of retirement and on the city employer contributions held for him, and calculated inthe manner provided by the provisions of other parts of this chapter, as they read on September 8, 1974, for determination of the amount of such allowance for other members of this system except that the provisions of this chapter for minimum

- service and disability retirement allowances do not apply to him unless he meets the minimum service requirements therefor. In the event such member should die before retiring pursuant to the provisions of this section, a death benefit equal to his accumulated contributions in this retirement system shall be paid to his designated beneficiary, or to his estate if he fails to designate a beneficiary, unless a death benefit is payable under the provisions of Section 3.24.2170 in which latter event the death benefit payable under Section 3.24.2170 shall be deemed to be in lieu of any death benefit provided for herein and no death benefit shall be payable under the provisions of this section.
- In the event that the retirement system of the B. L. eounty of Santa Clara should also give to said member the right in the above-specified circumstances, to continue to be a member of the county retirement system and do subsequently become entitled to service or disability retirement under the county system at the same time that such person could retire under the provisions of subsection A. of this section, and if such member should subsequently retire for service or disability under the county's system pursuant in such provisions of the county's retirement system at the same time that he retires under the city's retirement system pursuant to the above provisions of subsection A. of this section, then in that event the monthly service retirement allowance or monthly disability retirement allowance, as the case may be, which such person shall be entitled to receive from the retirement fund established by this city system shall be, in lieu of the amount hereinabove specified in subsection A., an amount of money which, when added to the monthly retirement allowance which such person will be entitled to receive under and pursuant to the county retirement system, will make the total amount of such city allowance and county allowance equal the monthly service retirement allowance, or the monthly disability retirement allowance if the retirement is for disability, which such persons would be entitled to receive under

and pursuant to the provisions of subsection A. of this section if such person were entitled to have credited to him as city service all county service for which he is entitled to credit under the county retirement system and if such county service had been rendered at the same rate of compensation as that paid to him by the county for such service.

- In determining or computing the amount of any of the abovementioned city or county allowances, no modification shall be made because of said person's election to have part of his allowance paid to himself during his life and a part paid after his death to any survivor, estate or other person under any optional settlement provision or provisions existing in either the city's retirement system or in the county's retirement system. However, nothing herein contained shall be deemed to prohibit such person from exercising any optional settlement rights granted him by a county retirement system or plan. Also, if any person retiring from city service pursuant to the provisions of this Section 3.24.2190 should wish to have part of his above-specified city retirement allowance paid to himself during his life and a part paid after his death to a survivor, estate or other person under and pursuant to the optional settlement provisions of Part 19 of this chapter, he shall have the right to have such done under and pursuant to and subject to the provisions of said Part 19.
- 3. If, after retiring from county and city service as aforesaid, any such person should become reinstated into couoty service, his city retirement and city requirement allowance shall cease as of the date he is reinstated into county service, and, except to the extent hereinafter otherwise expressly provided, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance or any right to any allowance under any optional retirement provision. However, if after being so reinstated into county service he should again be retired from county service, he shall then again be deemed to have retired, for the same cause, from city service as of the date of his last retirement

from county services, and shall be entitled to a city retirement allowance in an amount determined and calculated in accordance with the above provisions of this section, and shall have such other rights as are hereinabove expressly granted by the above provisions of this section with respect to his first retirement.

(Prior code § 2904.172.)

3.24.2200 Reentry into city service.

A. If after retiring from city service under and pursuant to the provisions of Sections 3.24.2160 or 3.24.2190 such retired person should again become an officer or employee of the city of San José, other than as a member of the city council or member of a city board or commission, his city retirement and city retirement allowance shall cease as of the date he is re-employed by the city, and, except to the extent hereinafter otherwise expressly provided in this section, neither he nor his estate or any of his survivors or beneficiaries shall thereafter have any right to any retirement allowance, or any right to any allowance under any optional settlement provision, or any other right under the provisions of this chapter. If such person's new employment with the city is in a position which entities him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if he should subsequently retire under and pursuant to the provisions of other parts of this chapter, and if at the time he so retires pursuant to provisions of such other parts he is receiving or is or becomes entitled to receive a retirement allowance from the county of Santa Clara because of county service rendered after September 9, 1974, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system, while he is receiving a retirement allowance from the county of Santa Clara, a monthly retirement allowance from the city determined and calculated as provided to Section 3,24,2160. The last-mentioned election must be made prior to the time he is granted retirement.

B. If a person who is eligible for and entitled to the option specified in Section 3.24.2150 exercises such option in the manner and time specified in Section 3.24.2150, but such person's employment with the county of Santa Clara does not continue without interruption from September 9, 1974, until terminated by his retirement, either for service or disability, under and pursuant to the retitement plan or system of said county, and such person should subsequently again become an officer or employee of the city, he shall thenceforth have no rights whatsoever to any allowances or benefits under the provisions of this Part 22, except such as may hereinafter be expressly granted by the provisions of this section. If such person's said new employment with the city is in a position entitling him to membership in the retirement system established by the provisions of this chapter, he shall thenceforth have only auch retirement and other rights as are provided for members generally by the provisions of other parts of this chapter; provided and excepting, however, that if such person's employment with the county of Santa Clara had been discontinued under and by virtue of circumstances or reasons specified in Section 3.24.2190, and if in addition upon so discontinuing his employment with the county such person was entitled to continue and has continued his membership in the county's retirement system as described in subsection B. of Section 3.24.2190, and if in addition such person, at the same time that he should subsequently retire from city service under the retirement system established by this chapter should also be eligible to retire and does retire for or from county service under the county's retirement system, then in that event only he shall have the right to receive, if he so elects, on retiring from city service under this retirement system while he is receiving a retirement allowance from the county, a monthly retirement allowance from the city determined and calculated as provided in Section 3.24.2160. The last-mentioned election must be made prior to the time he is granted retirement.

(Prior code § 2904.173.)

3.24.2210 Return to city employment.

A. Either

- Any person who is eligible for and entitled to the option specified in Section 3.24.2150 and who exercises such option in the manner and time specified in Section 3.24.2150; or
- 2. Any person employed on September 8, 1974, in the communications department of the city who on September 9, 1974 was employed in the communications department of the county of Santa Clara, who had five hundred dollars or more of accumulated contributions standing to his credit in this system on September 8, 1974, all of which contributions were withdrawn by such person upon county employment; who is not entitled to service or disability retirement in the county system; and

 Whose employment with the county of Santa Clara terminated for any reason on or before March 7, 1975, and who returned to city employment on or before March 7, 1975; or

- 4. Who is laid off from the county and returns to city employment on or hefore September 8, 1976, shall be entitled to credit under this system for service rendered to the county by contributing, within thirty days after returning to city employment, to this system for such period of county service, an amount of money such person would have been required to contribute to this system had he been a city employee during his period of county employment based upon his county rate of compensation, and his compensation for retirement purposes shall for such period of county service be computed at the rate of pay paid him by the county for such service.
- B. In the event any person returns to city service under this section, the other sections of Part 22 shall not apply to him, and he shall have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter, except insofar as additional rights, if any, are given by this Section 3.24.2210.

(Prior code § 2904.174.)

3.24.2220 Retirement at age fifty-five - Less than five years of county service.

A. Any person who is eligible for and entitled to the option specified in Section 3.24.2150 who § 3.24,2220

exercises such option in the manner and time specified in said Section 3.24.2150 whose employment with the county of Santa Clara continues without interruption from September 9, 1974 until he reaches age fifty-five, who is otherwise eligible to retire for service under and pursuant to a retirement plan or system of the county, except that he does not have five years of county service, who terminates his employment with the county at age fifty-five, shall be deemed to have retired from city service and eligible for service retirement benefits under other parts of this chapter as of the day of such termination, if he contributes, within thirty days after such termination, to this system for his period of county service the amount of money he would have been required to contribute to this system had he been a city employee during his period of county employment based upon his county rate of compensation, and his compensation for retirement purposes shall for such period of county service be computed at the rate of compensation paid him by the county for such

B. In the event that such person elects to contribute said amount under the conditions above stated, the other sections of Part 22 shall not apply to him, and he shall have only such retirement and other rights as are provided for members generally by the provisions of other parts of this chapter, except insofar as additional rights, if any, are given by this section.

(Prior code § 2904.175.)

3.24.2230 Additional costs to be borne by city.

All additional costs incurred by this retirement system because of any special benefits provided by the provisions of this Part 22 to any city officers or employees or former officers or employees over and above such benefits as would be provided to such employees by provisions of other parts of this Chapter if this Part 22 had not been adopted shall be borne and paid for by the city.

(Prior code § 2904.177.)

3.24.2240 Reference to other parts or sections.

Whenever reference is made by any of the provisions of this Part 22 to any other parts, or to any sections contained in any other part of this chapter, such reference shall be deemed to be made to such

other part or section or sections as it or they existed on September 8, 1974. (Prior code § 2904.176.)

Part 23

MEDICAL BENEFITS FOR CERTAIN RETIREES AND SURVIVORS

Sections:

3.24.2250	Medical benefits for retired
	members.
3,24,2260	Medical benefits for survivors of members.
3.24,2270	Requirements for participation in
	medical insurance plan.
3,24,2280	Allocation of costs of providing
	medical insurance coverage to
	members or survivors.
3.24.2290	Eligihie medical plan.

3.24.2250 Medical benefits for retired members.

Subject to the provisions of this chapter, if a member is retired for service or disability and at the time of such retirement is entitled to credit for fifteen or more years of service, or is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, said member may be entitled to medical insurance coverage in an eligible medical plan as specified in Section 3.24.2270, below. (Ord. 21763.)

3.24.2260 Medical henefits for survivors of members.

Subject to the provisions of this chapter, if a surviving husband, wife, child and/or children, as those terms are defined in Section 3.24.2040 of this chapter, is receiving a monthly survivorship allowance pursuant to Part 20 of this chapter because of the death of a member, and the member either died before receiving retirement pay or was retired for either service or disability, and such member was at the time of death entitled to credit for fifteen or more years of service or was receiving an allowance of at least thirty-seven and one-half percent of final compensation, then in said event, the surviving

husband, wife, child and/or children may be entitled to medical insurance coverage in an eligible insurance plan as specified in Section 3.24.2270, below. (Ord. 21763.)

3.24.2270 Requirements for participation in medical insurance plan.

- A. A member, as specified in Section 3.24.2250, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the member satisfies the following requirements:
 - The member retires for service or disability pursuant to the provisions of this chapter; and
 - The member applies for medical insurance coverage at the time of his or her retirement in accordance with the provisions of the medical insurance plan, and agrees to pay any applicable premiums.
- B. A survivor, as specified in Section 3.24.2260, above, is eligible to participate in a medical insurance plan sponsored by the city provided that the following conditions are satisfied:
 - The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment and was retired pursuant to the provisions of this chapter; and
 - At the time of the member's death, the member and the survivor were enrolled in one of the medical insurance plans sponsored by the city; and
 - The survivor applies to continue medical insurance coverage at the time of the member's death, and agrees to pay any applicable premiums.
- C. A member may secure medical insurance coverage for a spouse only if the spouse and member were married at the time of said member's retirement for service or disability. A surviving husband or wife shall be eligible for single coverage only, unless at least one unmarried child of the member, or of the member's husband or wife, under the age of eighteen years, is surviving the death of the member; in such case, if at the of the member's death such child was enrolled in a medical

insurance plan sponsored by the city, then the surviving husband or wife shall be eligible for family coverage.

D. As used in this section, "medical insurance plan sponsored by the city" means an eligible medical plan as described in Section 3.24.2290, below.

Notwithstanding the provisions of Sections 3.24.2270.A.1., 2., and 3., and 3.24.2270.B.1., 2., and 3., members or their survivors who would otherwise qualify for participation in a medical insurance plan pursuant to the provisions of this part, but who, at the time of retirement or death, could not enroll because the benefits provided in this part were not available at the time of the member's retirement for service or disability or death of the member, may enroll in an eligible insurance plan as provided for in this part on or before October 31, 1984. If a member or survivor does not enroll on or before October 31, 1984, then said members or their survivors must otherwise comply with the coverage limitations provided in Section 3.24,2270 and with all other provisions of this part.

(Ords. 21763, 22807.)

3.24.2280 Allocation of costs of providing medical insurance coverage to members or survivors.

Premiums for medical insurance coverage under this part shall be paid as follows:

- The city shall pay that portion of the premium which represents an amount equivalent to the lowest of the premiums for single or family medical insurance coverage for which the member or survivor is eligible and in which the member or survivor enrolls under the provisions of this part, which is available to an employee of the city at such time as said premium is due and owing.
- 2. Members or survivors shall be required to pay that portion of the premium which represents the difference between the cost of the premium for the medical plan selected by the member or the survivors and the portion paid by the city. Such premium as is required to be paid by a member or survivor shall be deducted from the allowance payable to such member or survivor under this chapter.

(Ord. 21763.)

3.24.2290 Eligible medical plan.

For purposes of this part, members or their survivors may secure medical insurance coverage only from an eligible medical plan with which the city has entered into a contract for the provision of hospital, medical, surgical and related benefits as part of the city's benefits to city employees. (Ord. 21763.)

Part 24

DENTAL BENEFITS FOR RETIRED MEMBERS AND SURVIVORS

Sections:

3.24.2300 Dental benefits for retired members.
3.24.2310 Dental benefits for survivors of members.
3.24.2320 Requirements for participation in dental insurance plan.
3.24.2330 Costs of dental insurance.
3.24.2340 Eligible dental plan.

3.24.2300 Dental benefits for retired members.

Subject to the provisions of this chapter, if a member of this system is retired for service or disability and at the time of such retirement is (i) entitled to credit for five or more years of service, or (ii) is receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member, or (iii) would be receiving an allowance equal to at least thirty-seven and one-half percent of the final compensation of said member if the workers' compensation offset set forth in Section 3.28.1040 did not apply, then said member may be entitled to dental insurance coverage in an eligible dental plan as specified in this part. (Ord. 22261.)

3.24.2310 Dentai benefits for survivors of members.

Subject to the provisions of this chapter, if a surviving husband, wife, child and/or children, as those terms are defined in Section 3.24.2310, is receiving a monthly survivorship allowance pursuant to Part 20 of this chapter because of the death of a member of this system, then said surviving husband, wife, child and/or children may be entitled to dental

insurance coverage in an eligible dental plan as specified in this part, if the following conditions are satisfied:

- A. The member either died before receiving retirement pay or was retired for either service or disability; and
- B. Such member was at the time of death:
 - Entitled to credit for five or more years of service; or
 - Was receiving an allowance equal to at least thirty-seven and one-half percent of finat compensation; or
 - Would have been receiving an allowance equal to at least thirty-seven and one-half percent of final compensation if the workers' compensation offset set forth in Section 3.28,1040 did not apply.

(Ord. 22261.)

3.24.2320 Requirements for participation in dental insurance plan.

- A. A member, as specified in Section 3.24.2300 above, is eligible to participate in a dental insurance plan sponsored by the city provided that the member satisfies the following requirements:
 - The member terminates city employment pursuant to the retirement provisions of this chapter; and

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- At the time of his or her retirement, the member is enrolled in one of the dental insurance plans sponsored by the city.
- B. A survivor of a member, as specified in Section 3.24.2010, above, is eligible to participate in a dental insurance plan sponsored by the city provided that the survivor satisfies the following requirements:
 - The survivor is receiving a monthly survivorship allowance because of the death of a member who either died during his or her employment with the city or died after he or she terminated city employment pursuant to the retirement provisions of this chapter; and
 - At the time of the member's death, the member and the survivor were enrolled in one of the dental insurance plans sponsored by the city.
- C. Notwithstanding the provisions of subsections A. and B. of this section, all retired members and survivors who meet the qualifications set forth in

David Weintraub

From: ruth paik [ruthpaik@yahoo.com]
Sent: Friday, April 26, 2013 10:45 AM

To: David Weintraub

Subject: Dr.'s Note

Hi David: Please let me know asap if you think I should contact OUSD with my Dr.'s note, or if you think it's okay to wait longer/wait for them to contact me about it. Thank you--Ruth

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- 1. Ensure there are no other shipping or tracking labels attached to your package. Select the Print button on the print dialog box that appears. Note: If your browser does not support this function select Print from the File menu to print the label.
- 2. Fold the printed sheet containing the label at the line so that the entire shipping label is visible. Place the label on a single side of the package and cover it completely with clear plastic shipping tape. Do not cover any seams or closures on the package with the label. Place the label in a UPS Shipping Pouch. If you do not have a pouch, affix the folded label using clear plastic shipping tape over the entire label.
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